GROUND LEASE

between

BATTERY PARK CITY AUTHORITY,
d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY,
Landlord

and

MILLENNIUM BPC DEVELOPMENT LLC,
Tenant

Premises

Site 1

January 1, 2000

Battery Park City
New York, New York

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AGREEMENT OF LEASE (this "Lease") made as of the 1st day of January, 2000 between BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY ("Landlord"), a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281 and MILLENNIUM BPC DEVELOPMENT LLC ("Tenant"), a New York limited liability company, having an office at c/o Millennium Partners, 1995 Broadway, New York, New York 10023.

WITNESSETH:

It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings.

"Accounting Principles" shall mean (a) with respect to the Hotel, from time to time, (i) the then current generally accepted accounting principles, consistently applied, using the accrual method of accounting, and if and to the extent not consistent with the foregoing generally accepted accounting principles and/or the accrual method of accounting, (ii) the consistent application of the system of accounting prescribed at the time of application in the Uniform System of Accounts for Hotels, Ninth Revised Edition (1996), as amended from time to time, adopted by the Hotel Association of New York City, Inc. and the American Hotel & Motel Association and (b) with respect to the Residential Portion, from time to time, the then current generally accepted accounting principles, consistently applied, using the accrual method of accounting.

"Affiliate" shall mean with respect to any Person (i) (a) any Person that has, directly or indirectly, an ownership interest in the aggregate of five percent (5%) or greater in such Person or (b) any Person in which such Person or an Affiliate of such Person by virtue of clause (a) of this definition, has an ownership interest in the aggregate of five percent (5%) or greater, and (ii) any individual who is a member of the immediate family (whether by birth or marriage) of such Person, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood of such individual or his spouse, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing.

"Annual Percentage Rent Statement" shall have the meaning provided in Section 3.05(d).

"Approved Remedies" shall have the meaning provided in Section 26.03(a).

"Architect" shall mean Gary Edward Handel & Associates in association with Polshek & Partners LLP or any other architect which is retained by Tenant to perform work on the exterior of the Building or any part of the Building or Premises for which the Design Guidelines sets forth design, use or other requirements, such other architect to be approved by Landlord, which approval may be withheld by the Landlord in its sole discretion.

"Base Rent" shall have the meaning provided in Section 3.01(a).

"Board" or "Boards" mean the Condominium Board, the Residential Board or the Commercial Board, as the case may be, or more than one of the foregoing.

"BPCA" shall mean Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority.

"Building" shall mean the building, including footings and foundations, and other improvements and appurtenances of every kind and description hereafter erected, constructed or placed upon the Land including, without limitation, Equipment, the Public Open Space, the Public Amenity Space, Capital Improvements and any and all alterations and replacements thereof, additions thereto and substitutions therefor.

"Business Days" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by either the State of New York or the federal government.

"Business Interruption/Rent Insurance" shall have the meaning provided in Section 7.01(a)(iv).

"Bylaws" mean the bylaws and rules and regulations annexed to or otherwise made part of the Declaration together with all amendments, modifications and supplements thereto that are permitted under the terms hereof.

"Capital Improvement" shall have the meaning provided in Section 13.01.

"Cause" shall mean (a) fraud, criminal felony indictment, gross negligence or willful misconduct by Manager or by CMJ and/or PEA if such fraud, criminal felony indictment, gross negligence or willful misconduct relates to any action or omission in connection with the business of the Tenant, (b) the death or physical or mental incapacity of CMJ or (c) the occurrence of any of the events described in Sections 24.01 (d), (e), (f), and (g) with respect to CMJ, PEA or the Manager.

"Certificate of Occupancy" shall mean a certificate of occupancy (temporary or permanent) issued by the Department of Buildings of New York City pursuant to Section 645 of the New York City Charter or other similar certificate issued by a department or agency of New York City.

"Certified Public Accountant" or "C.P.A." shall mean any independent certified public accountant or accounting firm selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

"Civic Facilities Budget" shall have the meaning provided in Section 26.04(c).

"Civic Facilities Payment" shall have the meaning provided in Section 26.04.

"Civic Facilities" shall have the meaning provided in Section 26.01(a).

"CMJ" mean Christopher M. Jeffries.

"Commencement Date" shall mean the date of this Lease.

"Commencement of Construction" shall mean the date upon which on-site construction of the Building shall commence, including any excavation or pile driving but not including test borings, test pilings, surveys and similar pre-construction activities.

"Commercial Board" means the board of managers designated by the Hotel Unit Owner or designated by Landlord as more fully set forth in the Bylaws.

"Commercial Common Elements" shall have the meaning set forth in the Declaration.

"Commercial Limited Common Elements" shall have the meaning set forth in the Declaration.

"Commercial Units" means the Hotel Unit and the Public Amenity Unit.

"Common Charges" means the aggregate of amounts required under this Lease and the Bylaws to be paid by Unit Owners to the Condominium Board, or the Condominium Board and Landlord. Common Charges may also include other amounts needed to pay the expenses of operating the Condominium but not required to be paid under this Lease, as determined by the Condominium Board, the Board or the Commercial Board, as the case may be, as provided in the Condominium Documents.

"Common Elements" has the meaning provided in the Declaration.

"Common Interests" has the meaning provided in the Declaration.

"Completion of the Building" shall mean the occurrence of the Completion of the Hotel Portion, Completion of the Residential Portion and Completion of the Public Amenity Core and Shell.

"Completion of the Hotel Portion" shall mean the satisfaction in full of all of the following conditions: (i) the date of issuance of a temporary or permanent Certificate of Occupancy for the Hotel Portion, (ii) the date on which all of the FF&E required for the

operation of the Hotel have been installed in the Hotel and the Hotel is fully operational, (iii) the date on which all of the licenses and permits required for the operation of the Hotel (including, without limitation, liquor and restaurant licenses) have been obtained and all Requirements required for the operation of the Hotel have been met and (iv) the occurrence of the Hotel Opening Date.

"Completion of the Public Amenity Core and Shell" shall mean the date that the Public Amenity Core and Shell is complete in accordance with the terms of this Lease.

"Completion of the Public Amenity Space" shall mean the date of issuance of a temporary or permanent Certificate of Occupancy for all of the Public Amenity Space.

"Completion of the Residential Portion" shall mean the date of issuance of a temporary or permanent Certificate of Occupancy for all of the Residential Portion.

"Condominium" means the condominium created pursuant to the Declaration and the By-Laws.

"Condominium Act" means Article 9-B of the Real Property Law of the State of New York, as from time to time amended, or any statute in lieu thereof.

"Condominium Board" means the board of managers of the Condominium comprised of members of the Commercial Board and members of the Residential Board, as more fully set forth in the Bylaws.

"Condominium Conditions" has the meaning provided in Section 43.03(b).

"Condominium Covenants" mean the terms, conditions, covenants and agreements that are required to be performed by Tenant under this Lease (except as provided in Section 43.04(b)) from and after the Condominium Date, including any covenants to be performed by the Condominium Board. Condominium Covenants include the obligation of any Board to pay to Landlord amounts payable to Landlord under this Lease, including Rent collected from the Unit Owners.

"Condominium Date" shall mean the date of the Initial Unit Transfer.

"Condominium Default" means, at any time after the Condominium Date, the failure of the Condominium Board, as Tenant hereunder, to comply with or observe or perform any of Condominium Covenants or any Event of Default described in Sections 24.01(d), (e), (f), (g), (h), (i), (j), (k) or (l).

"Condominium Default Costs" means Default Costs incurred by any Board.

"Condominium Depository" has the meaning provided in Section 43.11(c).

"Condominium Documents" mean the Condominium Plan, the Declaration, the Bylaws, the Unit Deed and the Residential Unit Mortgagee Subordination and Recognition Agreement, as from time to time amended in accordance with the terms hereof.

"Condominium Management Agreement" means an agreement between the Condominium Board and the Residential Managing Agent, including any sub-management agreement between the Residential Managing Agent and a sub-manager, in substantially the form(s) approved by Landlord as part of the Initial Condominium Documents and as provided in Exhibit D, or such other form as may be approved by Landlord, which provides, inter alia: (i) for the management and operation of the Residential Units collectively, including the maintenance and repair of the Common Elements of the Residential Units collectively, (ii) for the collection from the Residential Unit Owners and custody (x) in trust on behalf of Landlord, of all Residential Proportionate Rent, and (y) in trust on behalf of the Condominium Board, of all Common Charges payable by Residential Unit Owners in respect of the operation, maintenance and repair of the Common Elements, and any other charges payable by Residential Unit Owners under the Declaration and Bylaws, not including Residential Proportionate Rent, (iii) for the payment by the Condominium Board of all fees and charges of the Residential Managing Agent (including any thereof which may be payable in respect of Residential Proportionate Rent), and (iv) for such other matters as the Condominium Board or Landlord reasonably requires consistent with the preceding portions of this definition of "Condominium Management Agreement".

"Condominium Plan" means the plan of Declarant to submit Declarant's leasehold estate in the Premises to condominium ownership, together with all amendments, modifications and supplements thereto permitted hereunder.

"Construction Agreements" shall mean agreements for construction, Restoration, Capital Improvement, rehabilitation, alteration, repair or demolition performed pursuant to this Lease.

"Construction Commencement Date" shall mean the Commencement Date.

"Construction Completion Escrow Agreement" has the meaning provided in Section 43.03(b).

"Construction Completion Guaranty" means the Construction Completion Guaranty to be executed and delivered by the Construction Guarantor pursuant to Section 43.03(b) hereof.

"Construction Documents" shall have the meaning provided in Section 11.02(c).

"Construction Guarantor" means the Affiliate of the initially named Tenant herein who executes the Construction Completion Guaranty and who at the time of the execution thereof has a minimum net worth, computed in accordance with the Accounting Principles, consistently applied, of at least Two Hundred Million Dollars ($200,000,000) and that has contributed capital as of the date thereof of at least Three Hundred Million Dollars ($300,000,000).

"Construction Manager" shall mean Lehrer McGovern Bovis (or any entity wholly owned or controlled by Lehrer McGovern Bovis) or any construction manager or contractor retained by Tenant and approved by Landlord, which approval shall be granted if such construction manager is experienced in constructing buildings which are similar in size, type and quality of the Building.

"Construction Mortgage" means the mortgage securing repayment of a loan from the Institutional Lender for the construction of all or any portion of the Building, and which is entered into in accordance with Article 10.

"Construction Mortgagee" means holder of the Construction Mortgage.

"Construction Mortgagee Subordination and Recognition Agreement" shall have the meaning provided in Section 10.10(e).

"Consumer Price Index" or "CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y. - Northeastern N.J. Area, All Items (1982-84 = 100), or any successor or substitute index thereto, appropriately adjusted; provided that if there shall be no successor index and the parties shall fail to agree upon a substitute index within thirty (30) days, or if the parties shall fail to agree upon the appropriate adjustment of such successor or substitute index within thirty (30) days, a substitute index or the appropriate adjustment of such successor or substitute index, as the case may be, shall be determined by arbitration pursuant to Article 36.

"Contractor" shall have the meaning provided in Section 40.02.

"Control" (or any variation of such term) of one Person (the "controlled entity") by another (the "controlling entity") means, that the controlling entity has the sole power and authority, directly or indirectly, to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities, by contract, or otherwise, without the need for any approval from any shareholder, member, partner or other owner of such controlled entity or any other person or entity, except for rights conferred on a shareholder, member, partner or other owner (a) as matter of statutory, regulatory, decisional or common law; (b) to consent or withhold consent to a merger, consolidation, dissolution or liquidation; (c) to consent or withhold consent to a purchase, sale, finance, lease or other acquisition or disposition of all or substantially all of the entity's assets; (d) to consent or withhold consent to becoming a guarantor or surety for another Person; and (e) to consent or withhold consent to a fundamental change in investment policies.

"Declarant" means the named Tenant under this Lease at the time of the filing of the Declaration and the initial owner of the Condominium Units.

"Declaration" means the instrument by which Declarant submits Declarant's leasehold estate in the Premises to the Condominium Act, together with all amendments, modifications and supplements thereto permitted hereunder.

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

"Default Collateral" shall have the meaning provided for in Section 24.01(c).

"Default Costs" means, with respect to any Unit, any costs and expenses incurred by any Board or by Landlord as the result of a Unit Owner Default by such Unit Owner of such Unit, including, without limitation, any tax obligations and any costs or expenses incurred in connection with any Legal Proceeding or in a subsequent disposition of a Unit acquired by any Board or Landlord (or its nominee) or incurred otherwise in connection with the collection of Rent (including, without limitation, reasonable attorneys' fees and disbursements) together with interest thereon at the Involuntary Rate.

"Default Notice" has the meaning provided in Section 43.10(b).

"Defaulting Hotel Unit Owner" has the meaning provided in Section 43.13(a).

"Defaulting Residential Unit Owner" has the meaning provided in Section 43.10(a).

"Deficiency" shall have the meaning provided in Section 24.04(c).

"Deficiency Amounts" has the meaning provided in Section 43.12(a).

"Department of Law" has the meaning provided in Section 43.02(b).

"Depository" shall mean a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, to serve as Depository pursuant to this Lease, provided all funds held by such Depository pursuant to this Lease shall be held in New York City. In the event Tenant shall have failed to designate a Depository within ten (10) Business Days after request of Landlord, Depository shall be Tenant's or Hotel Unit Sublessee's Mortgagee if such Mortgagee qualifies as an Institutional Lender and Landlord shall have the right to designate such Depository if there is no Mortgagee or if a Mortgagee does not qualify as an Institutional Lender.

"Design Development Plans" have the meaning provided in Section 11.02(b).

"Design Guidelines" shall mean the Design Guidelines dated November 1999, annexed hereto as Exhibit C, including, without limitation, that certain supplemental letter from Landlord dated January 1, 2000 also annexed hereto as Exhibit C, as the same may (subject to the provisions of Section 41.18 hereof) hereafter be amended, modified or supplemented, provided that any such amendment, modification or supplement shall not effect or conflict with the Schematics, the Design Development Plans and/or the Construction Documents which had been previously approved by Landlord in accordance with Article 11.

"Design/Construction Period Fund" shall have the meaning provided in Section 11.13.

"Design/Construction Period Letter of Credit" shall have the meaning provided in Section 11.13.

"Due Date" shall mean, with respect to an Imposition, the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof.

"Environmental Statutes" shall mean all federal, state and local laws, rules and regulations, whether now existing or hereafter enacted or promulgated, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material or the protection of the environment, including, without limitation (i) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.(known as CERCLA or Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986 (known as SARA); (ii) Solid Waste Disposal Act, 42 U.S.C. Section 6901 et seq. (known as SWDA) as amended by Resource Conservation and Recovery Act (known as RCRA); (iii) National Environmental Policy Act, 42 U.S.C. Section 4321 et seq. (known as NEPA); (iv) Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq. (known as TSCA); (v) Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq. (known as Public Health Service Act, PHSA); (vi) Refuse Act, 33 U.S.C. Section 407 et seq.; (vii) Clean Water Act, 33 U.S.C. Section 1251 et seq. (known as Federal Water Pollution Control Act, FWPCA); (viii) Clean Air Act, 42 U.S.C. Section 7401 et seq. (known as CAA); (ix) The Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 1101 et seq. (known as EPCRTKA); (x) the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq. (known as OSHA); and (xi) the New York Environmental Conservation Law, Section 1-0101 et seq. (known as ECL).

"Equipment" shall mean all fixtures and equipment incorporated or located in the Building, as the same may be repaired, replaced, substituted, upgraded or improved from time to time, including, without limitation, (i) all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas pertaining to the Building, computers relating to the use and operation of the Building and sensors, and (ii) laundry equipment and refrigerators, stoves, dishwashers and other major kitchen appliances, except to the extent any of the foregoing specified in this clause (ii) or similar moveable equipment shall be owned by Subtenants (other than Subtenants who are Affiliates of Tenant), and except further to the extent any of the foregoing specified in this clause (ii) or any similar moveable equipment shall be owned by tenant-stockholders under a cooperative plan or Unit Owners or tenants thereof or any concessionaires or contractors engaged in maintaining the same. "Equipment" shall not mean any fixture or utilities owned by any utility company.

"ERS" shall have the meaning provided in Section 26.01(a).

"Event of Default" shall have the meaning provided in Section 24.01.

"Excluded Persons" shall have the meaning provided in Section 41.06(b).

"Expiration Date" shall have the meaning provided in Section 2.02.

"FF&E" shall mean the furniture, furnishings, fixtures and Equipment located in the Hotel.

"FF&E Reserve" shall have the meaning provided in Section 15.03.

"First Appraisal Date" shall have the meaning provided in Section 3.01(c).

"General Common Elements" shall have the meaning provided in the Declaration.

"Governmental Authority" or "Governmental Authorities" shall mean the United States of America, the State of New York, New York City and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

"Hotel" shall mean the hotel and accessory or related uses within the Building (including, but not limited to, a health club; restaurants, bars or other retail or establishments above the ground floor providing goods or services; gift shops, newsstands or other shops without separate outside public entrances; and meeting, conference or ballroom spaces) which shall contain the uses indicated in Section 23.01 (b) subject to the restrictions and requirements stated therein and in Section 23.05.

"Hotel Base Rent" shall have the meaning provided in Section 3.01(a).

"Hotel Baseline Amount(s)" shall have the meaning provided in Section 3.10(a).

"Hotel Default Notice" has the meaning provided in Section 43.13(b).

"Hotel Gross Revenue" shall mean, as determined in accordance with the Accounting Principles, all revenues received by or on behalf of Tenant, any Subtenant, Hotel Operator or any Affiliate of any such Persons in connection with the operation of the Hotel, including, without limitation, the following:

(i) all revenues from the operation of the Hotel or in connection with any activity conducted therein from both cash and credit transactions, including, without limitation, all revenues, including commissions, from room rentals, food and beverages, room service and other service charges, non-public telephones and other telecommunications or data processing devices, including facsimile service, internet connection and movie rentals, bars and restaurants, vending machines, checkrooms, washrooms, cigar or newsstands, license, lease and concession fees, advertising and promotional services, banquet, conference and convention facilities, meeting rooms,

flowers and entertainment, garage parking, guest laundry, game rooms, sports or health facilities, swimming pool-cabanas-baths and valet or transportation services;

(ii) with respect to any space in the Hotel from which retail (including entertainment) operations are conducted, all revenues received by Tenant therefrom, including, without limitation, Tenant revenues from the aggregate gross sales from any business conducted in, upon or for such space. Such sales shall include, but not be limited to, the amounts received by Tenant from the wholesale or the retail sale of goods, wares and merchandise and for services performed in, upon or from such space from which retail operations are conducted, together with the amount received by Tenant for all orders taken or received thereat, whether such orders be filled therefrom or elsewhere, and shall include revenues received by Tenant for sales made or performed by mail, telephone or other telecommunications device or otherwise credited or attributed to operations therein from mechanical or other vending devices, in such space. For purposes of determining Hotel Gross Revenue, cash refunds to purchasers or allowances made on merchandise claimed to be defective or unsatisfactory shall be deducted from gross sales to the extent that the same were previously included in gross sales; and there shall be deducted from gross sales the sales price of merchandise returned by customers for exchange, provided that the sales price of merchandise delivered to the customer in exchange shall be included in gross sales;

(iii) (a) all revenues received by or on behalf of Tenant, Hotel Operator, a Subtenant or an Affiliate of any such Person (1) from a utility or other company providing telephones, other telecommunication or data processing devices or vending machines in consideration of granting such provider the right to install and maintain the same in the Hotel or (2) relating to the operations conducted by such Person in any portion of the Hotel occupied by such Person; (b) any interest earned on deposits, accounts, reserves or other investments maintained in connection with the operation of the Hotel (provided, however, that with respect to the FF&E Reserve and other customary deposits, accounts, or reserves required by an Institutional Lender or required to be maintained under the Hotel Operator Management Agreement or this Lease, interest earned thereon shall constitute Gross Revenues only to the extent same is paid to, or withdrawn by, Tenant rather than held as part of the FF&E Reserve or any such other deposit, account or reserve) and (c) the fair market rental value of any portion of the Hotel occupied by Tenant, Hotel Operator or an Affiliate of Tenant or of Hotel Operator (other than as may be directly required for Hotel operations) pursuant to the provisions of Section 3.06(d) hereof; and

(iv) any proceeds of Business Interruption/Rent Insurance coverage pursuant to Article 7 hereof.

Notwithstanding the provisions of clauses (i) through (iv) herein, the term "Hotel Gross Revenue" shall exclude the following items:

(A) any sums received by or on behalf of Tenant, Hotel Operator or a Subtenant which constitute the proceeds received from any financings or refinancings of any indebtedness with respect to any portion of the Building, capital contributions or loans to such Persons and the proceeds received from the sale, exchange or other disposition of all or any portion of the Hotel or which represent reimbursement for physical damage to all or any portion of the Hotel, including the FF&E and personalty (other than inventory or consumables) used in connection with the operation or maintenance thereof such as, but not limited to, (1) insurance proceeds (other than the proceeds of Business Interruption/Rent Insurance coverage pursuant to Article 7 hereof), (2) other proceeds on account of physical damage, or (3) condemnation proceeds;

(B) gratuities received or collected by Tenant, Hotel Operator or any Subtenant and paid by Tenant, Hotel Operator or any Subtenant, directly or indirectly, to individuals employed or retained by Tenant, Hotel Operator or such Subtenant for services provided or assistance rendered in connection with the operation or maintenance of the Hotel;

(C) applicable sales, use, excise, occupancy, admission or similar taxes (not including gross receipts taxes) or other similar governmental charges, which similar charges are collected directly from customers or patrons or guests of the Hotel and are separately stated; and

(D) management, incentive or other fees received by Hotel Operator under the Hotel Operator Management Agreement.

All revenues not herein specifically excluded from Hotel Gross Revenue shall be deemed included in Hotel Gross Revenue.

"Hotel Opening Date" shall mean the date of which the Hotel shall open for business to the general public.

"Hotel Operator" shall mean (i) Ritz-Carlton Hotel Company, LLC for a Ritz-Carlton hotel or any Affiliate of Ritz-Carlton Hotel Company, LLC ("Ritz-Carlton") (provided that (a) such Affiliate, or one of its Affiliates, owns the Ritz-Carlton Rights (as defined in the form of Hotel Operator Management Agreement annexed hereto as Exhibit D); (b) such Affiliate and one or more of its Affiliates (if any) operate all the hotels in the United States which are operated under the Ritz-Carlton Rights; and (c) neither such Affiliate, not any of its Affiliates which operate hotels under the Ritz-Carlton Rights, operates any hotels under trade names other than Ritz-Carlton) or any assignee which is not an Affiliate, but which acquires all or a substantial part of the assets of Ritz-Carlton Hotel Company, LLC (including the Ritz-Carlton Rights) and assumes the obligations of Ritz-Carlton Hotel Company, LLC; provided that in no event will the entity operating the Hotel also operate hotels which are operated under trade names other than Ritz-Carlton), or (ii) any operator which (x) is a member of a national reservation or affiliation system that is financially solvent and has sufficient financial worth to perform the obligations of Hotel Operator under the Hotel Operator Management Agreement as evidenced by submission to Landlord of financial information and other information regarding such operator

and (y) has substantial experience in the ownership and/or management for at least ten (10) years of hotels similar in size and type to the Hotel, which meet the service, furnishing and rating requirements set forth in Section 23.05 and (z) at the time of submission of financial information is the manager of at least five (5) hotels meeting the foregoing requirements.

"Hotel Operator Management Agreement" shall mean (a) (i) the written agreement(s) entered into or to be entered into by Tenant and Ritz-Carlton Hotel Company, LLC as Hotel Operator in the form of Exhibit D annexed hereto (exclusive of the comments set forth in that certain memorandum attached to Exhibit D unless incorporated in such agreements in accordance with Section 41.25) (but inclusive of Landlord's approval of certain modifications of the terms of such agreements set forth on the last page of such memorandum), or (ii) the written agreement(s) entered into or to be entered into by Tenant and any Hotel Operator other than Ritz-Carlton Hotel Company, LLC substantially in the form of Exhibit D (inclusive of the comments set forth in the memorandum attached as part of Exhibit D) except that the performance threshold, the competitive set of the hotels against which the performance threshold is measured, and the management and incentive fees set forth in Exhibit D shall be subject to the reasonable approval and modification by Landlord to reflect the then-market terms for hotels having the highest rating by a nationally recognized hotel rating service (e.g., Mobil or Triple A) taking into account the age of the Hotel assuming a first class repair and restoration program, or (iii) any successor or subsequent management agreement which shall have been approved by Landlord and entered into or to be entered into by Tenant and any Hotel Operator, and (b) any amendments or modifications thereto or extensions thereof provided that any material amendments, modifications or extensions shall have been approved by Landlord.

"Hotel Operator Subordination Non-Disturbance Recognition Agreement" shall have the meaning provided in Section 10.13.

"Hotel Percentage Rent" shall have the meaning provided in Section 3.05(a).

"Hotel Percentage Rent Commencement Date" shall have the meaning provided in Section 3.05(a).

"Hotel PILOT Credit" shall have the meaning provided in Section 3.10(b)(ii)(y).

"Hotel PILOT Record Termination Date" shall have the meaning provided in Section 3.10(b)(iii).

"Hotel PILOT Record" shall have the meaning provided in Section 3.10(b).

"Hotel PILOT Shortfall Payment" shall have the meaning provided in Section 3.10(d).

"Hotel Portion" shall mean all portions of the Building including, without limitation, the space and areas used or designated for use by the Hotel, including the health club, retail and restaurant spaces subject to Section 23.05, except that the Hotel Portion shall not include the Residential Portion or the Public Amenity Space (except as otherwise provided in

this Lease). From and after the Condominium Date and for so long as the Declaration is in effect, the Hotel Portion shall be deemed to mean the Hotel Unit.

"Hotel Rent" means any Rent payable hereunder attributable to the Hotel Portion including, without limitation, Landlord's Default costs attributable to the Hotel Unit, and Landlord's Condominium Costs attributable to the Hotel Unit.

"Hotel Unit" means the hotel unit defined in the Declaration, and any appurtenant rights, including , the Commercial Common Elements, the Commercial Limited Common Elements and the Hotel Unit Owner's undivided common interest in the General Common Elements and if included pursuant to Section 23.06, the Public Amenity Space.

"Hotel Unit Escrow Agreement" shall mean the escrow agreement among Landlord, Tenant and Torys pertaining to the Hotel Unit Lease and the Hotel Unit Sublease (and related Memoranda of Lease) dated the date hereof.

"Hotel Unit Lease" shall mean that certain Hotel Unit Lease between Hotel Unit Owner, as lessor, and BPCA, as lessee, dated the date hereof and effective as of the Condominium Date.

"Hotel Unit Lessee" means the lessee under the Hotel Unit Lease or its permitted successors or assigns.

"Hotel Unit Lessor" means the lessor under the Hotel Unit Lease or its permitted successors or assigns.

"Hotel Unit Obligations" has the meaning provided in Section 43.13(i).

"Hotel Unit Owner" shall mean, the owner of the Hotel Unit.

"Hotel Unit Owner Default" has the meaning provided in Section 43.13(a).

"Hotel Unit Sublease" shall mean that certain Hotel Unit Sublease between Hotel Unit Sublessor and Hotel Unit Sublessee, dated the date hereof and effective as of the Condominium Date.

"Hotel Unit Sublessor" means the sublessor under the Hotel Unit Sublease or its permitted successors or assigns.

"Hotel Unit Sublessee" means the sublessee under the Hotel Unit Sublease or its permitted successors or assigns.

"Impositions" shall have the meaning provided in Section 4.01.

"Improvement Approvals" shall have the meaning provided in Section 13.01(a).

"Indebtedness" has the meaning provided in the Master Lease.

"Indemnitees" shall have the meaning provided in Section 19.01.

"Initial Condominium Documents" mean the Condominium Documents submitted to Landlord as of the date of execution and delivery of this Lease by Tenant.

"Initial Hotel PILOT Record Balance" shall have the meaning provided in Section 3.10(b)(i).

"Initial Unit Transfer" means the execution and delivery of the first Unit Deed by Declarant to a Qualified Unit Purchaser.

"Institutional Lender" shall mean a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company in each case organized and existing under the laws of its state or country of formation or any political subdivision thereof or the United States or any state thereof, a real estate investment trust, a religious, educational or eleemosynary institution, a governmental agency, body or entity, an employee, benefit, pension or retirement plan or fund, a commercial credit corporation, an investment bank, a commercial bank or trust company acting as trustee or fiduciary of various pension funds or tax-exempt funds, or as trustee in connection with the issuance of any bonds or any other debt financing, a special purpose corporation or other entity established for the purpose of securitized financing which is Controlled by any other Institutional Lender, or a corporation or other entity which is owned wholly by any other Institutional Lender or a subtrustee of any such commercial bank or trust company acting as such trustee, or any combination of the foregoing; provided, that each of the above entities, or any combination of such entities, shall qualify as an Institutional Lender for purposes of this Lease only if (a) each such entity shall be subject to (i) the jurisdiction of the courts of the State of New York in any actions with respect to this Lease and (ii) the supervision of (A) the Comptroller of the Currency or the Department of Labor of the United States or the Federal Home Loan Bank Board or the Insurance Department or the Banking Department or the Comptroller of the State of New York, or the Board of Regents of the University of the State of New York, or the Comptroller of New York City or any successor to any of the foregoing agencies or officials, or (B) any agency or official exercising comparable functions on behalf of any other state within the United States, or (C) in the case of a commercial credit corporation, the laws and regulations of the state of its incorporation, or (D) any federal, state or municipal agency or public benefit corporation or public authority advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and/or maintenance of improvements, and (b) each such entity, or combination of such entities, or the parent or parents of such entity or entities, shall have individual or combined assets, as the case may be, of not less than Five Hundred Million Dollars ($500,000,000) as of the date of the giving of a Mortgage by Tenant to any such aforementioned Person.

"Involuntary Rate" shall mean the Prime Rate plus two percent (2%) per annum but, in no event, in excess of the maximum permissible interest rate then in effect in the State of New York.

"Issuing Bank" or "Issuer" shall mean the issuer of a Letter of Credit (hereinafter defined).

"Land" shall mean the land described in Exhibit A hereto.

"Landlord", on the Commencement Date, shall mean BPCA, but thereafter "Landlord" shall mean only the landlord at the time in question under this Lease.

"Landlord Default Costs" mean Default Costs incurred by Landlord.

"Landlord's Civic Facilities" shall have the meaning provided in Section 26.01(b).

"Landlord's Condominium Costs" has the meaning provided in Section 43.09(e).

"Landlord's Construction Obligations" shall have the meaning provided in Section 26.03(a).

"Landlord's Project Manager" shall have the meaning provided in Section 11.02(e).

"Law" shall mean any and all applicable present and future laws, rules, orders, directives, ordinances, regulations, statutes, requirements, codes and executive orders, and any amendments thereto, of any and all Governmental Authorities having jurisdiction over the Premises, the Land, the Building, the Units or any portion of any of the foregoing, any requirements or conditions of any licenses, permits, approvals or certificates issued by any of the foregoing, the direction of any public officer pursuant to the law, and the requirements and conditions of any easement, covenant, restriction, condition or other encumbrance that is binding upon the Premises or the applicable portion thereof.

"Lease" shall mean this Agreement of Lease and all amendments, modifications and supplements thereof.

"Lease Year" shall mean the twelve-month period beginning on the Commencement Date and each succeeding twelve-month period during the Term.

"Legal Proceeding(s)" mean any suit to recover a money judgment for unpaid Common Charges (including, without limitation, Rent), including without limitation, any foreclosure of a lien provided under the Condominium Act; it being understood that Legal Proceedings may be maintained without foreclosing or waiving such lien.

"Letter of Credit" shall have the meaning provided in Section 42.01(a).

"Maintenance Obligations" shall have the meaning provided in Section 26.02.

"Manager" shall mean, collectively, with respect to a limited liability company or a partnership, the managing member or members (if more than one) or the general partner or partners (if more than one) of such limited liability company or partnership.

"Master Development Plan" shall mean the plan annexed to the Master Lease (hereinafter defined), as superseded and modified by the Large-Scale Commercial Development Plan (also annexed to the Master Lease) and amendments thereto dated as of November 9, 1992 and as of February 28, 1995, as the same may (subject to the provisions of Section 41.18 hereof) be hereafter amended, modified or supplemented.

"Master Landlord", on the Commencement Date, shall mean BPCA, but thereafter, "Master Landlord" shall mean only the lessor at the time in question under the Master Lease.

"Master Landlord Recognition Agreement" shall have the meaning provided in Section 29.02.

"Master Lease" shall mean the Restated Amended Agreement of Lease, made as of June 10, 1980, between BPC Development Corporation, as landlord, and BPCA, as tenant, a Memorandum of which was recorded on June 11, 1980 in the Office of the City Register, New York County in Reel 527 at page 163, as amended by First Amendment to Restated Amended Lease dated as of June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 424, Second Amendment to Restated Amended Lease dated June 15, 1983 and recorded on June 20, 1983 in said Register's Office in Reel 696 at page 432, Third Amendment to Restated Amended Lease dated as of August 15, 1986 and recorded on October 22, 1986 in said Register's Office in Reel 1133 at page 569 and Fourth Lease Amendment to Restated Amended Lease dated as of May 25, 1990 and recorded on May 30, 1990 in said Register's Office in Reel 1697 at page 302, as the same may (subject to the provisions of Section 41.18 hereof) be hereafter amended, modified or supplemented.

"Maximum Fund Requirement" means an amount equal to the sum of the following as of any date during the Term but not before the July 1 that follows the first taxable status date under the Tax Law after the later of (i) the date on which each of the Residential Units is separately assessed for purposes of the Tax Law, and (ii) the date of issuance of the Certificate of Occupancy for all portions of the Building, not including the Public Amenity Space: (x) the annual Residential Base Rent, (y) the annual Civic Facilities Payment payable with respect to the Residential Units collectively in the third lease year, and (z) the annual PILOT under this Lease attributable to the Residential Units collectively.

"Maximum Percentage Rent" shall have the meaning provided in Section 3.05(a).

"MEA" shall mean Millennium Entertainment Associates, a New York limited partnership.

"Memorandum of Understanding" shall mean the Memorandum of Understanding, dated as of November 8, 1979, among the Governor of the State of New York,

the Mayor of New York City and the President and Chief Executive Officer of BPCA, as supplemented by Letter, dated November 8, 1979, from the President and Chief Executive Officer of BPCA to the Mayor of New York City, and as amended by the 1986 Supplemental Memorandum of Understanding, dated as of August 15, 1986 among the Governor of the State of New York, the Mayor of the City of New York and BPCA, and the Amendment to the Memorandum of Understanding, dated as of January 9, 1995 among the Governor of the State of New York, the Mayor of the City of New York and BPCA.

"MEP" shall mean Millennium Entertainment Partners, a New York limited partnership.

"Millennium Hotel Unit Owner" shall have the meaning provided in Section 10.01(a)(iii).

"Mortgage" shall mean (i) until the Condominium Date any mortgage or security interest including, any construction loans, which constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby, and (ii) upon the Condominium Date any mortgage or security interest which constitutes a lien on Hotel Unit Lessor's interest in the Hotel Unit and Hotel Unit Sublessee's interest in the Hotel Unit Sublease (it being understood that such mortgage may also constitute a lien on other collateral, including any Unit then owned by Declarant), provided in each instance that the holder thereof has executed a Mortgagee Subordination and Recognition Agreement as provided in Article 10, and such mortgage or security interest is held by (x) an Institutional Lender, (y) a Person formerly constituting Tenant, or such Person's assignee, if such mortgage or security interest is made to such Person in connection with an assignment by Tenant of its interest in this Lease or Hotel Unit Lessor of its interest in the Hotel Unit and Hotel Unit Sublessee of its interest in the Hotel Unit Sublease, as the case may be (other than an assignment by Tenant or Hotel Unit Lessor and Hotel Unit Sublessee of its interest in this Lease, Hotel Unit, Hotel Unit Lease or Hotel Unit Sublease, as the case may be, to an Affiliate) or (z) Landlord (or its successors or assigns). The term "Mortgage" shall not include a Residential Unit Mortgage or any other mortgage, lien or security interest on all or any portion of the leasehold estate created hereby or under the Hotel Unit Lease or under the Hotel Unit Sublease which does not fall within the above definition or which does not conform with the terms hereof.

"Mortgagee" shall mean the holder of a Mortgage. The term "Mortgagee" shall not include a Residential Unit Mortgagee (as hereinafter defined).

"Mortgagee Subordination and Recognition Agreement" shall have the meaning provided in Section 10.10(d).

"New York City" or the "City" shall mean The City of New York, a municipal corporation of the State of New York.

"Operating Costs" shall have the meaning provided in Section 26.04.

"Parks Budget" shall have the meaning provided in Section 26.04(c).

"Payment in Lieu of Taxes" or "PILOT" shall have the meaning provided in Section 3.02.

"PEA" means Philip E. Aarons.

"Person" shall mean an individual, limited liability company, corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, State, County or municipal government or any bureau, department or agency thereof.

"Phase III" shall mean the Battery Place Residential Area which is that portion of the Project Area south of West Thames Street.

"Phase III Esplanade" shall have the meaning provided in Section 26.01(a).

"Phase III Esplanade Budget" shall have the meaning provided in Section 26.04(c)

"Post Condominium Date Transaction " shall have the meaning provided in Section 10.01(d).

"Premises" shall mean the Land and Building.

"Prime Rate" shall mean the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a three hundred and sixty (360) day year with twelve (12) months of thirty (30) days each.

"Prior Tenants" shall have the meaning provided in Section 26.04(b).

"Prohibited Person" shall have the meaning provided in Section 10.01(c).

"Project Area" shall mean the premises demised pursuant to the Master Lease.

"ProVictor" shall mean ProVictor V Millennium Property Fund, L.P., a Georgia limited partnership, or any subsidiary entity that is wholly owned by such limited partnership.

"ProVictor Transaction" shall have the meaning provided in Section 10.01(a)(iii).

"Prudent Management Standards" shall have the meaning provided in Section 23.01(a).

"Public Amenity Core and Shell" shall mean the following structural elements of the Public Amenity Space to the extent servicing or supporting the Public Amenity Space:

(a) Structural elements of the Public Amenity Space, including, without limitation, the foundation, floor slabs, curtain walls, structural supports, supporting columns,

vertical risers, lobbies (excluding finish items which are not customarily part of base building work), corridors, all supporting walls, ceilings, duct work for air-conditioning units, and all wire or cable located above the ceiling, on the floors, below the floor and in the curtain walls and window convectors, air shafts, elevator shafts, electrical and other utility closets, equipment rooms, fire doors and fire stairways, but excluding all Equipment which is to a part of base building systems described in (b) below.

(b) The "base building systems" shall mean the following mechanical systems servicing the Building, including, without limitation:

(i) all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, incinerators, garbage compactors, antennas, computers and sensors;

(ii) the sprinkler system, including the main sprinkler loop on each floor and all vertical risers, but excluding the valves and branch systems from the point of connection with the main sprinkler loops;

(iii) the elevator facilities, including the elevator cabs and all shafts, cables and other mechanical equipment relating thereto;

(iv) the heating, ventilation and air-conditioning system, but excluding the branch systems and duct work from and after the point of connection with the main vertical risers and ducts;

(v) all vertical pipes, mains and risers of the Building's plumbing and sanitary systems, but excluding any branch systems from the point of connection with such pipes, mains or risers;

(vi) the Building's electrical system, including, without limitation, any and all switch gears, risers, feeders, transformers, main distribution panels, wiring and meters relating thereto up through the point of connection to the Public Amenity Space;

(vii) the life safety, fire alarm and security systems, excluding any wiring, cables, risers, ductwork or distribution apparatus necessary to distribute such service within the Building; and

(viii) the main telephone switching equipment and closets.

"Public Amenity Entity" shall have the meaning provided in Section 23.06(b)(i).

"Public Amenity Space" shall have the meaning provided in Section 23.06(a)(i). From and after the Condominium Date, for so long as the Declaration is in effect, the Public Amenity Space shall be deemed to mean the Public Amenity Unit.

"Public Amenity Space Agreement" shall have the meaning provided in Section 23.06(b)(i).

"Public Amenity Space Use Conversion Date" shall have the meaning provided for in Section 23.06(c).

"Public Amenity Space Violation" shall have the meaning provided in Section 23.06(b)(i).

"Public Amenity Tax Assessment Date" shall have the meaning provided in Section 3.02.

"Public Amenity Unit" means the Unit comprising the Public Amenity Space also known as the Museum Unit in the Condominium Documents, and any appurtenant rights, including the owner of the Public Amenity Unit's undivided common interest in the General Common Elements.

"Public Notice" shall have the meaning provided in Section 23.06(b)(iv).

"Public Open Space" shall have the meaning provided in Section 23.01(b)(v).

"Qualified Developer" shall have the meaning provided in Section 10.01(e)(ii).

"Qualified Purchase Agreement" means an agreement for the purchase of a Residential Unit Owner's interest under a Unit Deed, signed by and binding on, any Person as purchaser thereunder substantially in the form set forth in the Condominium Plan, providing for a purchase price determined in accordance with the terms of the Condominium Plan and under which agreement such Person made all down payments required thereunder.

"Qualified Unit Purchaser" means the purchaser under a Qualified Purchase Agreement.

"Qualifying Sublease Non-Disturbance and Attornment Agreement" shall have the meaning provided in Section 10.09.

"Qualifying Sublease" shall have the meaning provided in Section 10.09.

"Quarterly Percentage Rent Statement" shall have the meaning provided in Section 3.05(c).

"Reappraisal Date" shall have the meaning provided in Section 3.01(c).

"Recognized Mortgage" means, collectively, the Construction Mortgage, any Mortgage and any Residential Unit Mortgage.

"Recognized Mortgagee" means the holder of a Recognized Mortgage.

"Rental" or "Rent" shall have the meaning provided in Section 3.08.

"Replacement Letter of Credit" shall have the meaning provided in Section 42.01(e).

"Requirements" shall have the meaning provided in Section 14.01.

"Residential Base Rent" shall have the meaning provided in Section 3.01(a)

"Residential Board" means the board of managers elected or designated by the Residential Unit Owners, as more fully set forth in the Bylaws.

"Residential Common Elements" shall have the meaning set forth in the Declaration.

"Residential Common Interest" shall have the meaning set forth in the Declaration.

"Residential Esplanade" shall have the meaning provided in Section 26.04(c).

"Residential Esplanade Budget" shall have the meaning provided in Section 26.04(c).

"Residential Limited Common Elements" shall have the meaning set forth in the Declaration.

"Residential Management Subordination and Attornment Agreements" shall have the meaning set forth in Section 43.03(b)(iii).

"Residential Managing Agent" means the Person, engaged by the Condominium Board from time to time, with Landlord's prior approval, for the management, operation and maintenance of the Residential Portion of the Premises (and any sub-manager appointed by such Person) and the performance of such other duties as are described in the Condominium Management Agreement. Notwithstanding anything to the contrary set forth above, Landlord, for purposes of this Lease, approves Millennium Partners BPC Management LLC or any Affiliate Controlled by CMJ and/or PEA as an acceptable Person to act as Residential Managing Agent.

"Residential Parks" shall have the meaning provided in Section 26.04(c).

"Residential Portion" shall mean that portion of the Building exclusively used for residential purposes (including residential apartments and related uses such as residential lobbies, hallways, stairways, storage or equipment spaces) other than the Hotel Portion or the Public Amenity Space, which residential use or uses accessory thereto comprises approximately 45.2304% of the actual square feet of the Building. From and after the Condominium Date for so long as the Declaration is in effect, the Residential Portion shall be deemed to mean collectively all the Residential Units, the Residential Common Elements, the Residential Limited

Common Elements and the Residential Unit Owners' aggregate undivided common interest in the General Common Elements.

"Residential Portion Payment Period" shall have the meaning provided in Section 26.04(c).

"Residential Proportionate Rent" means, with respect to any Residential Unit, the sum of (i) such Residential Unit's Residential Common Interest multiplied by the Residential Base Rent, (ii) such Residential Unit's Residential Common Interest multiplied by the Civic Facilities Payment payable with respect to the Residential Portion, (iii) the PILOT under this Lease attributable to such Residential Unit, which is payable with respect to such Residential Unit, (iv) Landlord Default Costs with respect to such Residential Unit, and (v) Landlord's Condominium Costs with respect to Residential Units to the extent required to be included in Residential Proportionate Rent under Section 43.12.

"Residential Rent" means with respect to any Residential Unit, the Rent payable hereunder attributable to such Residential Unit, including without limitation, the Residential Proportionate Rent.

"Residential Security Fund" shall have the meaning provided in Section 43.11(b).

"Residential Security Fund Amount" means $2,809,356.00.

"Residential Unit" means a Unit designated as a Residential Unit in the Declaration.

"Residential Unit Mortgage" has the meaning provided in Section 43.08(a).

"Residential Unit Mortgagee Subordination and Recognition Agreement" has the meaning provided in Section 43.08(a).

"Residential Unit Mortgagee" has the meaning provided in Section 43.08(a).

"Residential Unit Mortgagee Representative" has the meaning provided in Section 43.08(c).

"Residential Unit Obligation(s)" has the meaning provided in Section 43.10(j).

"Residential Unit Owners" means the Unit Owners of Residential Units.

"Residential Unit Owner Default" has the meaning provided in Section 43.10(a).

"Restoration" shall have the meaning provided in Section 8.01.

"Restoration Funds" shall have the meaning provided in Section 8.02(a).

"Ritz-Carlton Documents" shall have the meaning provided in Section 41.25(a).

"Restore" shall have the meaning provided in Section 8.01.

"Sale" has the meaning provided in Section 43.07(b).

"Scheduled Completion Date" shall have the meaning provided in Section 11.04.

"Schematics" shall have the meaning provided in Section 11.02(a).

"Self-Help" shall have the meaning provided in Section 26.03(b).

"Settlement Agreement" shall mean the Settlement Agreement dated as of June 6, 1980, between New York City and as supplemented by Letter, dated June 9, 1980, from Richard A. Kahan to Edward I. Koch, and amended by Amendment to Settlement Agreement dated as of August 15, 1986 between New York City and BPCA, Agreement for Certain Payments dated as of June 28, 1989, between New York City and BPCA, Agreement and Consent dated as of December 30, 1989, between New York City and BPCA, Amendment and Agreement and Consent Pursuant to Settlement Agreement dated as of May 18, 1990 between New York City and BPCA, Amendment and Agreement and Consent Pursuant to Settlement Agreement dated as of October 15, 1993 between New York City and BPCA, Amendment and Agreement and Consent Pursuant to Settlement Agreement dated as of April 10, 1995 between New York City and BPCA; 1996 Agreement and Consent Pursuant to Settlement Agreement dated as of October 1, 1996 between New York City and BPCA; 1998 Agreement and Consent Pursuant to Settlement Agreement dated as of May 1, 1998 between New York City and BPCA; and as the same may (subject to the provisions of Section 41.18 hereof) be hereafter amended, modified or supplemented.

"Sidewalk Easement" shall have the meaning provided in Section 23.01(b)(v).

"South Residential Neighborhood" shall mean that portion of the Project Area which is south of Liberty Street.

"Storage and Staging Letter" shall mean that certain letter agreement of even date herewith between Landlord and Tenant regarding the storage and staging of materials in connection with the construction of the Building.

"Subleases" shall have the meaning provided in Section 10.04.

"Substantial Completion of the Building" shall mean Substantial Completion of the Hotel Portion, Substantial Completion of the Public Amenity Core and Shell and Substantial Completion of the Residential Portion (each as hereinafter defined).

"Substantial Completion of the Hotel Portion" or, with respect to the Hotel Portion, "Substantially Complete(d)" shall have the meaning provided in Section 11.04.

"Substantial Completion of the Public Amenity Core and Shell" or, with respect to the Public Amenity Space Core and Shell, "Substantially Complete(d)" shall have the meaning provided in Section 11.04.

"Substantial Completion of the Residential Portion" or, with respect to the Residential Portion, "Substantially Complete(d)" shall have the meaning provided in Section 11.04.

"Substantially all of the Premises" shall have the meaning provided in Section 9.01(b).

"Subtenants" shall have the meaning provided in Section 10.04.

"Supplemental Hotel Base Rent" shall have the meaning provided in Section 3.10(e).

"Tax Law" shall mean the provisions of Chapter 58 of the Charter of New York City and Chapter 2, Title 11 of the Administrative Code of the City of New York, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof.

"Tax Year" shall mean each tax fiscal year of New York City.

"Taxes" shall mean the real property taxes assessed and levied against the Premises or any part thereof pursuant to the Tax Law as hereinafter defined which would otherwise be payable if the Premises or any part thereof or the owner thereof were not exempt therefrom, without exemption or abatement. Notwithstanding the foregoing, subject to any governmental approvals that may be required, Tenant shall be entitled to enjoy any exemption or abatement that would be available if the Land was privately owned unless such exemption or abatement is granted in connection with (x) the construction of a new building or (y) a renovation of a building in the circumstance where such building is not or would not have been entitled to such an exemption or abatement because it had already received an exemption or abatement in connection with the construction of a new building.

"Tenant's Civic Facilities" shall have the meaning provided in Section 26.01(b).

"Tenant" shall mean (i) prior to the Condominium Date, Millennium BPC Development, LLC, a New York limited liability company and, if it or any successor to its interest hereunder shall in accordance with the terms of this Lease assign or transfer its interest hereunder or any portion thereof, the term "Tenant" shall mean such assignee or transferee as to the interest so transferred or assigned, and (ii) from and after the Condominium Date, for so long as the Declaration is in effect, the term "Tenant" shall mean the Condominium Board.

"Term" shall have the meaning provided in Section 2.02.

"Title Matters" shall mean those matters affecting title to the Land set forth in Exhibit B hereto.

"Transaction Payment" shall have the meaning provided in Section 3.07.

"Transfer" shall have the meaning provided in Section 10.01(a).

"UCC" means the Uniform Commercial Code as the same may be in effect in the State of New York from time to time.

"Unavoidable Delays" shall mean (i) with respect to Tenant or its obligations hereunder, delays incurred by Tenant due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Tenant is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, casualty or other causes beyond the control of Tenant (but not including Tenant's insolvency or financial condition), Landlord's breach of its obligations under this Lease or under any other agreement between Landlord and Tenant now or hereafter made with respect to the Premises, Landlord's failure to complete Landlord's Civic Facilities in accordance with Section 26.02, or any delays or interference caused by Landlord or Master Landlord doing construction or performing development activities on sites other than the Premises, and (ii) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor jurisdictional disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than any governmental restrictions which Landlord is bound to observe pursuant to the terms of this Lease), enemy action, civil commotion, fire, casualty or other causes beyond the control of Landlord (but not including Landlord's insolvency or financial condition) or Tenant's breach of its obligations under this Lease or under any other agreement between Landlord and Tenant now or hereafter made with respect to the Premises; in each case provided such party shall have notified the other party not later than thirty (30) days after such party knows of the occurrence of same.

"Units" means a portion of the Premises, together with a proportionate undivided interest in the Common Elements appurtenant to such portion of the Premises, all as described in the Condominium Documents.

"Unit Deed" means an instrument, in the form set forth in the Condominium Plan (or in such other form as may be approved by Landlord), pursuant to which the Unit Owner's leasehold condominium interest in a Unit (as described in the Condominium Documents) is granted and transferred by Declarant, or a Unit Owner of such Unit after Declarant's transfer thereof, to a purchaser thereof, such transfer being subject to the rights of Landlord under this Lease, including, without limitation such rights as exist in the event of a Unit Owner Default.

"Unit Owner" means the owner or owners at any one time of the Unit Owner's interest in a Unit, as described in the Condominium Documents.

"Unit Owner Action" has the meaning provided in Section 43.09(b).

"Unit Owner Default" means a Residential Unit Owner Default or a Hotel Unit Owner Default.

"Wagner Park Budget" shall have the meaning provided in Section 26. 04(c).

"Wagner Park" shall have the meaning provided in Section 26.01(a).

ARTICLE 2

PREMISES AND TERM OF LEASE

Section 2.01. Landlord does hereby demise and sublease to Tenant, and Tenant does hereby hire and take from Landlord, the Premises, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to the Title Matters.

Section 2.02. TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") commencing on the Commencement Date and expiring on June 17, 2069 or on such earlier date upon which this Lease may be terminated as hereinafter provided (the "Expiration Date").

ARTICLE 3

RENT

Section 3.01.

(a) Upon the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to Landlord, without notice or demand, the annual sums referred to below (collectively, the "Base Rent" and separately, the "Hotel Base Rent" and the "Residential Base Rent", for the Hotel Portion and the Residential Portion, respectively):

(1) With respect to the Hotel Portion:

(i) For each Lease Year (or portion thereof) Four Hundred Ninety-Four Thousand Seven Hundred Forty-Four Dollars ($494,744), up to but not including the First Appraisal Date.

(ii) For the Lease Year commencing on the First Appraisal Date and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Hotel Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) Six Hundred Eighteen Thousand Four Hundred Thirty Dollars ($618,430).

(iii) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(1)(ii) and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Hotel Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements

made by Landlord or (y) one hundred and twenty-five percent (125%) of the Hotel Base Rent payable in the last Lease Year of such preceding period.

(iv) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(1)(iii) and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Hotel Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Hotel Base Rent payable in the last Lease Year of such preceding period.

(v) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(1)(iv) and continuing until the expiration of the Term, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Hotel Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Hotel Base Rent payable in the last Lease Year of such preceding period.

(2) With respect to the Residential Portion:

(i) For each Lease Year (or portion thereof) Four Hundred Fifty-Eight Thousand Nine Hundred Six Dollars ($458,906), up to but not including the First Appraisal Date.

(ii) For the Lease Year commencing on the First Appraisal Date and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Residential Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) Five Hundred Seventy-Three Thousand Six Hundred Thirty-Three Dollars ($573,633).

(iii) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(2)(ii) and continuing for a period of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Residential Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Residential Base Rent payable in the last Lease Year of such preceding period.

(iv) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(2)(iii) and continuing for a period

of fifteen (15) Lease Years, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Residential Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Residential Base Rent payable in the last Lease Year of such preceding period.

(v) For the Lease Year commencing on the date immediately succeeding the expiration of the period referred to in Section 3.01(a)(2)(iv) and continuing until the expiration of the Term, an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land allocable to the Residential Portion, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord or (y) one hundred and twenty-five percent (125%) of the Residential Base Rent payable in the last Lease Year of such preceding period.

(b) The Base Rent shall be payable in equal monthly installments in advance commencing on the Commencement Date and on the first day of each month thereafter during the Term. The Base Rent shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable to the office of Landlord set forth above or at such other place in the City of New York as Landlord shall direct by notice to Tenant. The Base Rent due for any period of less than a full Lease Year, and any installment of the Base Rent due for any period of less than a full month, shall be appropriately apportioned.

(c) For the purposes of calculating Base Rent pursuant to Section 3.01(a)(1)(ii)-(v) and Section 3.01(a)(2)(ii)-(v), the fair market value of the Land shall be determined as of the first day of the month next succeeding the twenty-second (22nd) anniversary of the Commencement Date and as of each subsequent fifteenth anniversary thereafter (such twenty-second (22nd) anniversary being referred to herein as the "First Appraisal Date", and each subsequent fifteenth (15th) anniversary being referred to herein as a "Reappraisal Date"). Such determination of fair market value shall be by appraisal in the manner provided in Section 3.09 hereof, unless at least twelve months prior to the First Appraisal Date or any Reappraisal Date, Landlord and Tenant shall have agreed upon such fair market value. For purposes of this Section 3.01 and Section 3.09, in order to calculate Base Rent, 54.7696% of the Land shall be deemed to be allocable to the Hotel Portion, and 45.2304% of the Land shall be deemed allocable to the Residential Portion.

Section 3.02. For each Tax Year or portion thereof within the Term, Tenant shall pay to Landlord, without notice or demand, an annual sum, with respect to the Land and the Building, in an amount equal to Taxes for such Tax Year (each such sum being hereinafter referred to as a "Payment in Lieu of Taxes" or "PILOT"), on or before the last date or dates on which payments of Taxes, or the applicable installments thereof, are payable without interest or penalty under New York City law for such Tax Year except that, with respect to the Hotel Portion, such PILOT payments shall (i) include PILOT payments allocable to the Public

Amenity Space until the Condominium Date, and thereafter until the Tax Year, if any, for which the Public Amenity Unit receives a separate tax assessment (the first day of such Tax Year being herein referred to as the "Public Amenity Tax Assessment Date") (it being understood and agreed that after the Public Amenity Tax Assessment Date, to the extent PILOT payments are due with respect to the Public Amenity Space such PILOT shall be allocated solely to and payable by the owner of the Public Amenity Unit and (ii) be reduced by any Hotel PILOT Credit given as provided in Section 3.10 for the period from the Commencement Date through the first June 30th to occur after the tenth (10th) anniversary of the Commencement Date. With respect to Taxes allocable to the Premises, prior to the first date PILOT is due after the date on which separate tax assessments are obtained for the Hotel Portion, the Public Amenity Space, and the Residential Portion, such Taxes shall be apportioned 54.7696% to the Hotel Portion and the Public Amenity Space, and 45.2304% to the Residential Portion. PILOT due for any period which is less than a full Tax Year shall be appropriately apportioned and paid on the Commencement Date with respect to the PILOT for the semi-annual period in which the Commencement Date occurs.

Section 3.03. Tenant shall continue to pay the full amount of PILOT required under Section 3.02, notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 4.06 hereof to reduce the assessed valuation of the Premises or any portion thereof. If any such tax reduction or other action or proceeding shall result in a final determination in Tenant's favor (i) Tenant shall be entitled to a credit against future PILOT to the extent, if any, that the PILOT previously paid for the Tax Year or Tax Years for which such final determination(s) was (or were) made exceeds the PILOT as so determined, and (ii) if such final determination is made for the then current Tax Year, future payments of PILOT for said Tax Year shall be based on the PILOT as so determined. If at the time Tenant is entitled to receive such a credit the City of New York is paying interest on refunds of Taxes, Tenant's credit shall include interest at the rate then being paid by the City of New York on such refunds of Taxes. In no event, however, shall Tenant be entitled to any refund of any such excess from Landlord unless Landlord shall receive any such refund.

Section 3.04. Tenant shall pay to Landlord the Civic Facilities Payment in accordance with the provisions of Section 26.04.

Section 3.05. Tenant shall pay to Landlord Hotel Percentage Rent with respect to the Hotel Portion determined as follows:

(a) For the period commencing on the date Tenant shall first receive any Hotel Gross Revenue (such date being hereinafter called the "Hotel Percentage Rent Commencement Date") and ending on the last day of the Lease Year in which the Hotel Percentage Rent Commencement Date occurs, and for each Lease Year thereafter during the Term, Tenant shall pay to Landlord, during each such Lease Year, an amount ("Hotel Percentage Rent") equal to the lesser of (i) Five Hundred Forty-Two Thousand Five Hundred Twelve Dollars ($542,512) (the "Maximum Percentage Rent") and (ii) three percent (3%) of the amount by which Hotel Gross Revenue during each such Lease Year, or portion thereof, exceeds the Hotel Base Rent for each such Lease Year, or a portion thereof. Hotel Percentage Rent shall be computed

quarterly (subject to adjustment as provided in Section 3.05(d)) and paid in the manner hereinafter set forth.

(b) For the purposes of this Section 3.05, if the Hotel Percentage Rent Commencement Date shall occur on a day other than the first day of a Lease Year, the first Lease Year for purposes of Hotel Percentage Rent shall be the period from the Hotel Percentage Rent Commencement Date through the last day of the Lease Year in which the Hotel Percentage Rent Commencement Date occurs, and if the Expiration Date of the Lease is on a day other than the last day of a Lease Year, the last Lease Year for purposes of Hotel Percentage Rent shall be the period from the day after the last full Lease Year through the Expiration Date, and in each case, the applicable Hotel Base Rent and the Maximum Percentage Rent and the Hotel Gross Revenue shall, for purposes of computing the Hotel Percentage Rent for any such period, be appropriately prorated over such periods.

(c) Tenant shall deliver to Landlord as soon as practicable after the end of each quarter in each Lease Year, but in no event later than thirty (30) days thereafter, a statement (the "Quarterly Percentage Rent Statement") showing, in reasonable detail, Hotel Gross Revenue from the prior quarter. Based upon the Quarterly Percentage Rent Statement submitted by Tenant to Landlord, Tenant shall pay to Landlord the lesser of (i) One Hundred Thirty-Five Thousand Six Hundred and twenty-eight Dollars ($135,628), and (ii) three percent (3%) of the amount by which Hotel Gross Revenue for such quarter exceeds twenty-five percent (25%) of the Hotel Base Rent applicable to such Lease Year. Such partial payment of Hotel Percentage Rent shall be made by Tenant simultaneously with the submission to Landlord of the Quarterly Percentage Rent Statement.

(d) Tenant shall deliver to Landlord as soon as practicable after the end of each Lease Year, but in no event later than one hundred twenty (120) days thereafter, a separate statement (the "Annual Percentage Rent Statement") for such Lease Year. If the Annual Percentage Rent Statement shall show that the sums paid by Tenant as Hotel Percentage Rent for such Lease Year for which such Annual Percentage Rent Statement is given were less than the Hotel Percentage Rent payable by Tenant for such Lease Year, then Tenant shall pay to Landlord, together with the delivery to Landlord of the Annual Percentage Rent Statement, the amount of such deficiency, and if the Annual Percentage Rent Statement shall show that the sums paid by Tenant as Hotel Percentage Rent for such Lease Year exceeded the Hotel Percentage Rent payable by Tenant for such Lease Year, Landlord shall permit Tenant to offset the amount of such excess, without interest, against subsequent payments of Hotel Percentage Rent.

Section 3.06. In connection with the payment by Tenant of Hotel Percentage Rent, the following provisions shall apply:

(a) Tenant shall at all times keep and maintain at an office located in New York City books and records prepared on the basis required under Section 3.06(b), showing, in reasonable detail, the amount of Hotel Gross Revenue. Unless consented to by Landlord, such books and records relating to any Lease Year shall not be destroyed or disposed of for a period of

four (4) years after the end of such Lease Year. Landlord or its representatives, upon reasonable advance written notice, shall have the right during regular business hours to examine, audit and/or photocopy all such books and records. If an audit by Landlord with respect to a Lease Year is not commenced within the aforesaid four (4) year period, the computation of the Hotel Percentage Rent paid by Tenant for such Lease Year shall not thereafter be subject to Landlord's audit and shall conclusively be deemed correct.

(b) Each Annual Percentage Rent Statement and Quarterly Percentage Rent Statement required under this Lease shall be (i) prepared in accordance with Accounting Principles and (ii) verified by the chief financial officer or managing partner of Tenant or Hotel Operator, or if the managing partner of Tenant is not an individual, by the chief financial officer of such managing partner, as being true and correct to the best of his knowledge. Each Annual Hotel Percentage Rent Statement shall be certified by the C.P.A. Such certification shall include, without limitation, a statement by the C.P.A. that an examination of Tenant's books and records has been conducted by the C.P.A. in accordance with generally accepted auditing standards consistently applied and that the Annual Percentage Rent Statement has been prepared in accordance with Accounting Principles.

(c) If Landlord shall elect to conduct an audit of Tenant's books and records and such audit discloses an underpayment of Hotel Percentage Rent, subject to Section 3.06(e), Tenant shall pay to Landlord, within ten (10) days after demand, the amount of such deficiency, plus interest thereon at the Involuntary Rate from the date upon which such sum was due to the date of actual payment. In addition, if such deficiency shall be in excess of three and one-half percent (3.5%) of the amount alleged by Tenant to be payable, Tenant shall pay to Landlord, within ten (10) days after demand, all reasonable costs incurred by Landlord in connection with such audit.

(d) If Tenant, Hotel Operator or an Affiliate of Tenant or Hotel Operator shall use or occupy any portion of the Hotel not in connection with the operation of the Premises there shall be imputed as income the fair market rental value of the portion of the Hotel so occupied by Tenant, Hotel Operator or such Affiliates, as the case may be. Such income shall be deemed to be, and construed as, Hotel Gross Revenue, for all purposes of this Lease. Fair market rental as used in this Lease shall mean the rental which would be paid under a sublease (commencing at the same time as Tenant's, Hotel Operator's or such Affiliate's use or occupancy) with a non-related Person leasing a similar amount of space in the same Hotel, for the same term, for a similar purpose and in a similar location in the Hotel and shall include, inter alia, all fixed, percentage and escalation rents which would be included under such sublease.

(e) If at any time and for any reason there shall be a dispute as to the determination of Hotel Gross Revenue, or fair market rental value, such dispute shall be determined by arbitration pursuant to Article 36 hereof. Pending resolution of the dispute, Tenant's determination of Hotel Gross Revenue shall prevail and Tenant shall pay Hotel Percentage Rent based upon such determination. Without limitation of the foregoing, any deficiency, interest and expenses which may be payable by Tenant to Landlord pursuant to Section 3.06(c) shall not be payable if disputed by Tenant unless and until determined by such

arbitration. If such arbitration determines an underpayment by Tenant, Tenant shall pay the amount of such underpayment, plus interest thereon at the Involuntary Rate in accordance with this Section 3.06, within ten (10) days after demand.

(f) In the event that Tenant shall pay to Landlord the Maximum Percentage Rent for any consecutive period of three full Lease Years, then Tenant shall not thereafter be required to deliver to Landlord the Quarterly Percentage Rent Statements or Annual Percentage Rent Statements for any succeeding Lease Years or fiscal quarters in such Lease Years in which Tenant continues to pay Landlord the Maximum Percentage Rent (or the quarterly pro rata amount thereof).

Section 3.07. In lieu of individual payments to be made to Landlord by Tenant in connection with the sale or occupancy of each Residential Unit throughout the Term, Landlord and Tenant agree that Tenant shall pay to Landlord a single transaction payment in the amount of Two Million Dollars ($2,000,000) on the Commencement Date (the "Transaction Payment").

Section 3.08. All amounts required to be paid by Tenant pursuant to this Lease, including, without limitation, Base Rent, PILOT, Hotel Percentage Rent, Supplemental Hotel Base Rent, the Transaction Payment, Impositions, payments pursuant to Section 11.05(c) hereof and Civic Facilities Payments (collectively, "Rental" or "Rent"), shall constitute rent under this Lease and shall be payable in the same manner as Base Rent provided, however, that PILOT, Hotel Percentage Rent and payments pursuant to Section 11.05(c) shall not be paid on a monthly basis and shall be paid on the dates otherwise set forth in this Lease. Rental shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this Lease, so that this Lease shall yield, net, to Landlord, Rental in each year during the Term and that Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises (except Taxes, if any, and the cost of constructing and maintaining Landlord's Civic Facilities) which may arise or become due or payable during or after (but attributable to a period falling within) the Term.

Section 3.09.

(a) Each determination of fair market value of the Land referred to in Section 3.01(a)(1)(ii)-(v) and Section 3.01(a)(2)(ii)-(v) shall be made in accordance with the procedures set forth in Article XVII of the Master Lease. Landlord shall, and shall cause Master Landlord to, permit Tenant and Tenant's representatives (including its Mortgagee or Mortgagees, if any) and witnesses, at Tenant's cost and expense, to participate in such procedures. Landlord, as tenant under the Master Lease, shall appoint as its appraiser under the Master Lease an appraiser designated by Tenant provided that the appraiser so designated is qualified to act as such pursuant to the terms of the Master Lease, and Tenant shall pay the fees and expenses payable by Landlord as such tenant in respect of the Premises pursuant to Section 17.02 of the Master Lease.

(b) In the event that New York City shall, for any reason, fail to determine the assessed value of the Premises for any Tax Year during the Term, such assessed value shall be determined in accordance with the procedures set forth in Article XVII of the Master Lease,

provided that, in making such determination, the appraisers shall take into consideration the equalization rates then applicable to comparable properties situated in the Borough of Manhattan, as well as any limitations on increases in assessed value for such comparable properties prescribed by applicable law.

(c) Notwithstanding anything to the contrary contained in this Lease or in the Master Lease, for purposes of computing the "fair market value" of the Land, Landlord shall not modify the zoning controls applicable to the Land with respect to the bulk limitations or the use restrictions above the ground floor for the Land unless (a) Landlord agrees to compute the "fair market value" of the Land without regard to such modifications or (b) Tenant requests or consents to such modifications.

Section 3.10.

(a) Landlord and Tenant acknowledge that certain components of Rental assumed a tax deferral program which established a fixed PILOT schedule for the Hotel Portion (the "Hotel Baseline Amount(s)") and recapture payments for deferred PILOT payments as set forth in Schedule 1. Landlord and Tenant agree that PILOT for the Hotel Portion will be in an amount equal to Taxes allocable to the Hotel Portion. However, in view of such previously established Rental amounts, and since the parties contemplate that the PILOT allocable to the Hotel Portion will exceed the Hotel Baseline Amounts Landlord and Tenant agree that (i) a Hotel PILOT Record will be established as described below and that until the Hotel PILOT Record Termination Date, the Rental payments below shall be used to offset amounts due from Tenant for PILOT allocable to the Hotel Portion, (ii) as described in this Section 3.10, Tenant shall make any additional payments required to cover PILOT payments with respect to the Hotel Portion and as a result thereof shall be entitled to receive a credit against certain future Rental payments due and (iii) as described in this Section 3.10, Tenant shall make payments of Supplemental Hotel Base Rent.

(b) There shall be established and maintained an accounting record (the "Hotel PILOT Record") of certain Rental payments received by Landlord to be applied to PILOT with respect to the Hotel Portion. Until the Hotel PILOT Record Termination Date, for purposes of Landlord's financial statements, the payments indicated in Section 3.10(b)(x) received by Landlord shall be deemed to be payments or pre-payments of PILOT allocable to the Hotel Portion up to the aggregate amount of all Hotel PILOT Credits, however, such accounting treatment shall not affect Tenant's obligations under this Lease. The Hotel PILOT Record shall be subject to the provisions of this Section 3.10(b) as follows:

(i) The initial balance in the Hotel PILOT Record shall be in an amount equal to (x) the Transaction Payment less (y) an amount equal to the amount by which the PILOT due with respect to the Hotel Portion for the period from the Commencement Date to the first January 1 or July 1 after the Commencement Date exceeds the Hotel Baseline Amount applicable to such period (such net amount being the "Initial Hotel PILOT Record Balance").

(ii) The balance in the Hotel PILOT Record shall be adjusted and fixed each January 1 and July 1 after the Commencement Date (the last date or dates on which payments of Taxes, or the applicable installments thereof, are payable without interest or penalty under New York City law), as follows:

(x) by adding, (1) on the first January 1 or July 1 after the Commencement Date, to the Initial Hotel PILOT Record Balance and (2) on each January 1 and July 1 thereafter, to the final balance in the Hotel PILOT Record (A) for the preceding January 1 with respect to each July 1 and (B) for the preceding July 1 with respect to each January 1 an amount equal to all payments actually received by Landlord (and not previously added to the Hotel PILOT Record) for the Hotel Base Rent, the Residential Base Rent, quarterly installments of payments in lieu of such sales and compensating use taxes made pursuant to Section 11.05 hereof, Civic Facilities Payments for the Hotel Portion, Civic Facilities Payments for the Residential Portion and Hotel Percentage Rent (such payments received for any January or July or any prepayment for any other month in the current six month period in which the Hotel PILOT Record is adjusted shall be reflected in the Hotel PILOT Record balance for the following six month period), then

(y) by deducting, on each January 1 or July 1 after the Commencement Date, after giving effect to the adjustment in Section 3.10(b)(ii)(x) above, an amount equal to the amount by which the PILOT due with respect to the Hotel Portion on such January 1 or July 1 (for the following six month period) exceeds the Hotel Baseline Amounts applicable to such six month period, subject to Section 3.10(d) below (the adjustments in this Section 3.10(b)(ii)(y) a "Hotel PILOT Credit"). Notwithstanding the foregoing, in no event shall any Hotel PILOT Credit exceed the balance in the Hotel PILOT Record after the adjustment described in Section 3.10(b)(ii)(x).

(iii) On the earlier of (1) the first July 1 after the tenth (10th) anniversary of the Commencement Date or (2) the termination of this Lease (the "Hotel PILOT Record Termination Date"), the Hotel PILOT Record shall be

terminated and Landlord shall no longer apply any of the Rental payments listed in Section 3.10(b)(ii)(x) above to any PILOT payments due with respect to the Hotel Portion.

(c) In no event shall Landlord have any liability or performance obligations to collect any component of Rental. Upon Tenant's reasonable request, Landlord shall deliver to Tenant a written statement setting forth in reasonable detail the balance in the Hotel PILOT Record.

(d) To the extent that the deduction of the Hotel PILOT Credit from the balance of the Hotel PILOT Record as described in Section 3.10(b)(ii)(y) would result in a negative amount (assuming that the last sentence of Section 3.10(b)(ii)(y) did not apply) Tenant shall make an additional payment to Landlord equal to such negative amount (a "Hotel PILOT Shortfall Payment") on or before the January 1 or July 1 on which such negative amount would occur subject to all terms of this Lease applicable to the payment of Rental. However, in the event such a Hotel PILOT Shortfall Payment is made, Tenant shall be entitled to receive a credit against payments of the Hotel Base Rent or Hotel Percentage Rent in an amount equal to such Hotel PILOT Shortfall Payment, plus interest thereon at an annual rate of 7% from the date upon which such payment was initially made through the date Tenant utilizes such credit, except that such credits against Hotel Base Rent or Hotel Percentage Rent may only be used on or after the first July 1 to occur after the tenth (10th) anniversary of the Commencement Date.

(e) With respect to the Hotel Portion, Tenant shall make additional annual payments equal to the "Recapture Amount" as described in Schedule 1 for a ten (10) year period commencing with the first July 1 to occur after the tenth (10th) anniversary of the Commencement Date ("Supplemental Hotel Base Rent"). An assessment reduction in Tenant's favor for any Tax Year through to the end of the tenth (10th) full Tax Year shall be (i) credited against future PILOT payments under this Lease in the manner described in Section 3.03 and (ii) used to reduce the Supplemental Hotel Base Rent, provided, however, that Taxes used for purposes of computing such payments shall not be below the Projected Full Taxes specified for any year as set forth in Schedule 1.

ARTICLE 4

IMPOSITIONS

Section 4.01. Except as otherwise specifically provided herein, Tenant shall pay, as hereinafter provided, all of the following items (collectively, "Impositions") imposed by any Governmental Authority (other than a Governmental Authority acting in its capacity as Landlord under this Lease or as Hotel Unit Sublessor under the Hotel Unit Sublease and not in its governmental capacity): (a) real property assessments (not including Taxes), (b) personal property taxes, (c) occupancy and rent taxes, (d) water, water meter and sewer rents, rates and charges, (e) excises, (f) levies, (g) license and permit fees, (h) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting,

sanitation and water supply, if any, (i) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (j) except for Taxes, any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time during the Term are, or, if the Premises or any part thereof or the owner thereof were not exempt therefrom, would have been (1) assessed, levied, confirmed, imposed upon or would have become due and payable out of or in respect of, or would have been charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises (excluding any transfer taxes (unless required by statute to be paid by any party to a transaction where one party thereto is exempt therefrom) or capital gains taxes imposed in connection with the execution, delivery or recording of this Lease, any Unit Deed, Hotel Unit Lease, the Hotel Unit Sublease), or the use and occupancy thereof by Tenant and (2) encumbrances or liens on (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault (other than a vault in respect of which a utility company is obligated to pay any charge specified above or which is exempt from any such charge by reason of use thereof by any such utility company), passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises, or (v) any personal property (except personal property which is not owned by or leased to Tenant and except as otherwise specifically provided herein), Equipment or other facility used in the operation thereof, or (vi) except as otherwise specifically provided herein, the Rental (or any portion thereof) payable by Tenant hereunder, each such Imposition, or installment thereof, during the Term to be paid not later than five (5) Business Days prior to the Due Date thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, provided that all such installment payments together with applicable interest, if any, relating to periods prior to the date definitely fixed in Article 2 hereof for the expiration of the Term shall be made prior to the Expiration Date. Tenant shall promptly notify Landlord if Tenant shall have elected to pay any such Imposition in installments.

Section 4.02. Tenant, from time to time upon the request of Landlord, shall promptly furnish to Landlord copies of official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 4.03.

(a) If the Premises, or any part thereof, shall at any time become subject to Taxes, Landlord shall pay the Taxes on or before the Due Date thereof. In no event shall Tenant be obligated to pay Taxes. Landlord shall have the right to contest the imposition of Taxes, at Landlord's expense, and pending such contest, if permitted by applicable law, Landlord shall not be required to pay the Taxes being so contested, unless failure to pay same would result in the imminent loss or forfeiture of the Premises or the termination of Tenant's interest under this Lease or if Tenant would by reason thereof be subject to any civil or criminal penalty or liability. If Landlord shall exercise its right to contest the imposition of Taxes, Landlord shall promptly

notify Tenant of such contest, and, at Tenant's request, shall promptly deliver to Tenant copies of all applications, protest and other documents submitted by Landlord to (or received by Landlord from) any Governmental Authority. Any such proceeding by Landlord shall be commenced as soon as is reasonably possible and shall be prosecuted to final adjudication with reasonable dispatch. Landlord shall not, without Tenant's consent, enter into a settlement of any such contest if such settlement would increase the amount of PILOT payable by Tenant under this Lease or would alter the method for computing or affect the timing for payment of PILOT. If Landlord shall have failed to pay the Taxes as required hereunder and shall not have timely commenced a proceeding to contest same, or shall have timely commenced a proceeding to contest the Taxes but failure to pay the Taxes during the pendency of such proceeding will result in the imminent loss or forfeiture of the Premises or the termination of Tenant's interest under this Lease or Tenant would by reason thereof be subject to any civil or criminal penalty or liability, then Tenant may pay such unpaid Taxes together with any interest or penalties thereon and deduct such payment from the next installment of PILOT (and, to the extent, if any, that such payment shall exceed the next installment of PILOT, from the next installment(s) of Base Rent) together with interest thereon at the Involuntary Rate.

(b) Except as otherwise specifically provided herein, nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, transfer, capital or transfer gains taxes of Landlord (unless required by statute to be paid by the grantee or transferee where the grantor or transferor is exempt therefrom), or any corporate franchise tax imposed upon Landlord or any transfer or gains tax imposed on Landlord (unless required by statute to be paid by the grantee or transferee where the grantor or transferor is exempt therefrom).

Section 4.04. Any Imposition relating to a period a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the date fixed in Article 2 hereof for the expiration of the Term or sooner termination of this Lease (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Commencement Date or as of the date fixed for the expiration of the Term or sooner termination of this Lease, as the case may be, so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the period of time after the Commencement Date or before such date fixed in Article 2 for the expiration of the Term or sooner termination of this Lease bears to such fiscal period, and Landlord shall pay the remainder thereof. Other than in respect of Impositions relating, in part, to a period of time before the Commencement Date, no such apportionment of Impositions shall be made if this Lease is terminated prior to the Expiration Date as the result of an Event of Default.

Section 4.05. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01 hereof, payment of such Imposition shall be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, or interest therein or any income therefrom (except to the extent covered by security deposited in accordance with this Section 4.05) or any other assets of or funds appropriated to Landlord would by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability; and

(b) Tenant shall have deposited with Depository, cash or other security satisfactory to Landlord in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in such proceedings.

Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depository shall return, with interest, if any, any amount deposited with it as aforesaid, provided, however, that Depository at Tenant's request or upon Tenant's failure to do so in a timely manner, at Landlord's request, shall disburse said moneys on deposit with it directly to the Governmental Authority to whom such Imposition is payable and any remaining monies, with interest, if any, shall be returned promptly to Tenant. If, at any time during the continuance of such proceedings, Landlord shall, in its reasonable opinion, deem insufficient the amount deposited as aforesaid, Tenant, within fifteen (15) days after demand, shall make an additional deposit pursuant to this Article of such additional sums or other acceptable security as Landlord may request, and upon failure of Tenant to do so within such fifteen (15) day period, the amount theretofore deposited may be applied at the request of Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including attorneys' fees and disbursements) or other liability accruing in any such proceedings, and the balance, if any, with any interest earned thereon, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord or the applicable Governmental Authority within ten (10) days after demand.

Section 4.06. Tenant shall have the right to seek reductions in the valuation of the Premises, or any part thereof, assessed for Taxes and to prosecute any action or proceeding in connection therewith, provided that no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of Section 4.05 hereof. Except to the extent provided in Section 3.03 or Section 3.10 hereof, no such action or proceeding shall affect Tenant's obligation to pay any installment of PILOT.

Section 4.07. Landlord shall not be required to join in any proceedings referred to in Sections 4.05 or 4.06 hereof unless the provisions of any law, rule or regulation at the time in effect shall require that Landlord join in such proceedings or that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. If the provisions of such law, rule or regulation at the time in effect shall require that Master Landlord join in such proceedings or that such proceedings be brought by or in the name of Master Landlord, Landlord shall cause Master Landlord to join and cooperate in such proceedings or permit the same to be brought in the name of Master Landlord, provided that Master Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Master Landlord for any and all costs and expenses which Master Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. In the event Tenant shall institute a proceeding referred to in Sections 4.05 or 4.06 hereof and no law, rule or regulation in effect at the time requires that Landlord join in such proceedings or that such proceeding be brought by and/or in the name of Landlord, Landlord, nevertheless, shall, at Tenant's cost and subject to the reimbursement provisions hereinabove set forth, cooperate with Tenant in such proceeding and cause Master Landlord to cooperate.

Section 4.08. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting non-payment of such Imposition shall, absent manifest error, be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

ARTICLE 5

DEPOSITS FOR IMPOSITIONS

Section 5.01.

(a) In order to assure the payment of all Impositions, Tenant, upon the demand of Landlord at any time after the occurrence of an Event of Default hereunder, shall deposit with Depository on the first day of each month during the Term, an amount equal to one-twelfth (1/12th) of the annual Impositions then in effect.

(b) If at any time the monies so deposited by Tenant shall be insufficient to pay the next installment of Impositions then due, Tenant shall after demand therefor by Landlord deposit the amount of the insufficiency with Depository to enable Depository to pay the next installment of Impositions at least thirty (30) days prior to the Due Date thereof.

(c) Depository shall hold the deposited monies in a segregated, interest-bearing special account for the purpose of paying the charges for which such amounts have been

deposited as they become due, and Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges.

(d) If at any time the amount of any Imposition is increased or Landlord receives information from the entity or entities imposing such Imposition that an Imposition will be increased, and if the monthly deposits then being made by Tenant under this Section 5.01 would be insufficient to pay such Imposition thirty (30) days prior to the Due Date thereof, then upon notice from Landlord to Tenant of such fact together with reasonable evidence with respect to the same, the monthly deposits shall thereupon be increased and Tenant shall deposit immediately with Depository sufficient monies for the payment of the increased Imposition. Thereafter, the monthly payments shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay each Imposition at least thirty (30) days prior to the Due Date of such Imposition.

(e) For the purpose of determining whether Depository has on hand sufficient monies to pay any particular Imposition at least thirty (30) days prior to the Due Date thereof, deposits for each category of Imposition shall be treated separately. Depository shall not be obligated to use monies deposited for the payment of an Imposition not yet due and payable for the payment of an Imposition that is due and payable.

(f) Notwithstanding the foregoing, (i) deposited monies may be held by Depository in a single bank account, provided such account is segregated and interest-bearing and (ii) Depository shall, at Landlord's option and direction and if a Default shall occur hereunder, use any monies deposited pursuant to Articles 4 or 5 for the payment of any Rental.

(g) If this Lease shall be terminated by reason of any Event of Default or if dispossession occurs pursuant to Section 24.03(b), all deposited monies under this Article 5 then held by Depository shall be paid to and applied by Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency. Provided there is no Default, Event of Default or dispossession pursuant to Section 24.03(b), all monies deposited under this Article 5, together with interest earned thereon, if any, shall be paid to Tenant promptly after the Expiration Date.

(h) Any interest paid on monies deposited pursuant to this Article 5 shall be applied against amounts thereafter becoming due and payable by Tenant or returned to Tenant, as aforesaid.

(i) Anything in this Article 5 to the contrary notwithstanding, if the Event of Default which gave rise to Landlord having demanded that Tenant make deposits under this Section 5.01 shall have been cured by Tenant and for a period of six (6) consecutive months following such cure no Default shall have occurred under this Lease, then, at any time after the expiration of such six (6) month period, promptly upon the demand of Tenant, provided that Tenant is not then in Default under this Lease all monies deposited under this Article 5 then held by Depository, with the interest, if any, accrued thereon, shall be returned to Tenant and Tenant shall not be required to make further deposits under this Article 5 unless and until there shall

occur a subsequent Event of Default and Landlord shall make demand upon Tenant to make deposits for Impositions.

(j) In the event that a Mortgagee (provided such Mortgagee is an Institutional Lender) shall require Tenant to deposit funds to insure payment of Impositions, any amount so deposited by Tenant with such Mortgagee shall be credited against the amount, if any, which Tenant would otherwise be required to deposit under this Article 5, and Mortgagee for purposes of this Article 5 shall be deemed to be the Depository and bound by the provisions pertaining to Depository under this Article 5.

Section 5.02. If Landlord ceases to have any interest in the Premises, and provided that the Person acquiring Landlord's interest in the Premises agrees (in writing) to assume from and after the date of the transfer all of Landlord's obligations with respect to the deposits made pursuant to Section 5.01, Landlord promptly shall transfer to such Person all of Landlord's rights with respect to such deposits. Upon such transfer and notice thereof to Tenant, the transferor shall be released from all liability with respect thereto, the transferee shall assume from and after the date of such transfer all of Landlord's obligations with respect to such deposits and Tenant shall look solely to the transferee with respect thereto. The provisions hereof shall apply to each successive transfer of the deposits.

Section 5.03. Landlord shall have no liability to Tenant arising out of, or related to, any acts or omissions of Depository.

ARTICLE 6

LATE CHARGES

In the event that any payment of Rental shall become overdue beyond the due date thereof (or if no such date is set forth in this Lease, then such due date for purposes of this Article 6 shall be deemed to be the date upon which demand therefor is made), then, in addition to any costs and expenses incurred by Landlord in connection therewith (including, without limitation, reasonable attorneys' fees and disbursements) interest on the sums so overdue equal to the Involuntary Rate, for the period from the due date to the date of actual payment, shall become due and payable to Landlord as additional Rental to be paid under this Lease. Said interest shall be payable by Tenant within ten (10) days after demand. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay said interest shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24.

ARTICLE 7

INSURANCE

Section 7.01.

(a) Tenant shall, at all times after Substantial Completion of the Building and thereafter throughout the Term:

(i) keep or cause to be kept the Building and any FF&E located in the Hotel Portion insured under an "All Risk of Physical Loss" form of policy, including, without limitation, coverage for loss or damage by water, flood, subsidence and earthquake (excluding, at Tenant's option, from such coverage normal settling only) and, when and to the extent obtainable from the United States government or any agency thereof, war risks; such insurance to be written on an "Agreed Amount" basis, with full replacement cost, with the replacement value of the Building to be determined from time to time, but not less frequently than required by the insurer, it being agreed that no omission on the part of Landlord to request any such determination shall relieve Tenant of its obligation to determine the replacement value thereof (in the absence of such valuation, the FM (Factory Mutual) or IRI (Industrial Risk Insurers) Indices will be applied). Any "All risk" policy carried or caused to be carried by Tenant hereunder shall state that the valuation of any loss to be determined thereunder shall be made on a replacement cost basis and also shall contain an endorsement whereby the insurer waives all coinsurance requirements. Tenant, with the permission of Landlord, may arrange this "All Risk of Physical Loss" insurance policy with a deductible of no more than Ten Thousand Dollars ($10,000.00) for each loss provided, however, Tenant may arrange flood and earthquake insurance policies each with a deductible of no more than Fifty Thousand Dollars ($50,000);

(ii) provide and keep in force or cause to be provided and kept in force commercial general liability insurance against liability for bodily injury, death and property damage, it being agreed that such insurance shall (A) be in an amount as may from time to time be reasonably required by Landlord, but not less then One Hundred Million Dollars ($100,000,000) combined single limit inclusive of primary, umbrella and following form excess policies for liability for bodily injury, death and property damage, (B) include the Premises and all streets, alleys and sidewalks adjoining or appurtenant to the Premises, (C) provide blanket automatic contractual insurance covering the indemnification provisions assumed by Tenant hereunder, including bodily injury to employees or others assumed by Tenant under contract, which insurance shall cover all costs, expenses and/or liability (including, without limitation, attorneys' fees and disbursements) arising out of or based upon any and all claims, accidents, injuries and damages mentioned in Article 19 and required to be insured against hereunder, (D) provide for cross liability, allowing for a claim as a named insured or under contractual liability and specifically shall include Innkeeper's Legal Liability, Contractual Liability, Sprinkler Leakage Legal Liability, Elevators and Escalators Liability

(hereinafter described), Water Damage Legal Liability, Safe Deposit Legal Liability, Liquor Liability, Storekeeper's Legal Liability, Care and Custody Liability, Products Liability, Malpractice coverage (if medical services are provided) and Fire Legal Liability and (E) include the following protection:

(1) Broad form liability endorsement, including (a) blanket contractual liability, (b) personal injury and advertising injury liability, (c) premises medical payments, (d) host liquor liability, (e) fire legal liability on real property, (f) broad form property damage liability, including completed operations, (g) incidental medical malpractice, (h) limited world-wide coverage, (i) additional interests insured, (j) extended bodily injury coverage, and (k) automatic coverage on newly-acquired organizations;

(2) Products and completed operations;

(3) Independent contractors;

(4) Blanket automatic contractual liability to include bodily injury to employees of others assumed by Tenant; and

(5) Water damage legal liability shall not be excluded.

(iii) provide and keep in force workers' compensation insurance providing statutory New York State benefits for all persons employed by Tenant at or in connection with the Premises and employer's liability insurance in an amount not less than that required by New York State law;

(iv) provide and keep in force business interruption or rent insurance utilizing "All Risk" coverage in an amount necessary to provide full coverage for not less than one (1) year's continuing overhead expenses (including, without limitation, Base Rent, PILOT and Civic Facilities Payments), and shall include additional coverage for consequential damages in such year ("Business Interruption/Rent Insurance");

(v) provide and keep in force a Policy providing Dishonesty, Disappearance and Destruction Insurance (fidelity bond), on a blanket basis, with respect to the Hotel Operator in an amount not less than One Million Dollars ($1,000,000);

(vi) if a sprinkler system shall be located in any portion of the Building, provide and keep in force sprinkler leakage insurance in amounts approved by Landlord, which approval shall not be unreasonably withheld (the foregoing to be required only if same is excluded from the insurance required to be provided and kept in force pursuant to Section 7.01(a)(i));

(vii) provide and keep in force boiler and machinery insurance in an amount as may from time to time be reasonably determined by Landlord but not less than Ten Million Dollars ($10,000,000) per accident on a combined basis covering direct

property loss and loss of income and covering all steam, mechanical and electrical equipment, including without limitation, all boilers, unfired pressure vessels, air conditioning equipment, elevators, piping and wiring;

(vii) provide and keep in force automobile liability insurance for all owned, non-owned, leased, rented and/or hired vehicles insuring against liability for bodily injury and death and for property damage in an amount as may from time to time be reasonably determined by Landlord but not less than Twenty Five Million Dollars ($25,000,000) combined single limit; and

(viii) provide and keep in force such other insurance in such amounts as may from time to time be reasonably required by Landlord against such other insurable hazards as at the time are commonly insured against by prudent owners of like buildings and improvements.

(b) All insurance provided by Tenant as required by Section 7.01(a) (except the insurance under Section 7.01(a)(iii)) shall name Tenant as named insured and Landlord and Master Landlord as additional insureds to the extent, where applicable, of their respective insurable interests in the Premises and shall be primary with respect to any other coverage which Landlord and Master Landlord may obtain. (Landlord and Master Landlord's coverage shall be in excess of any coverage provided in favor of Landlord or Master Landlord by Tenant.) The coverage provided by Tenant as required by Sections 7.01(a)(i),(iv), (v), (vi) and (vii) also shall name each Mortgagee as an insured under a standard mortgagee clause, provided, however, any loss payable thereunder shall be payable as provided in this Lease.

(c) Whenever Tenant shall be required to carry insurance under this Section 7.01, Tenant shall not be required to carry insurance in any greater amounts or against any additional hazards than at the time are commonly carried by prudent owners of like buildings and improvements, provided that the types or amounts of such coverage shall never be different from or less than, as the case may be, the types or amounts specifically required hereunder unless such types or amounts are no longer available. Any dispute as to the amounts of additional insurance to be carried, or the additional kinds of hazards to be insured against, shall be resolved by arbitration pursuant to Article 36.

Section 7.02.

(a) The loss under all policies required by any provision of this Lease insuring against damage to the Building by fire or other casualty shall be payable to Depository, except that amounts of less than Five Hundred Thousand Dollars ($500,000) shall be payable in trust directly to Tenant for application to the cost of Restoration in accordance with Article 8 hereof except if such casualty occurs within the last five (5) years of the Term and damages all or Substantially all of the Premises and in such event, such proceeds shall be payable to the Depository. Such amount shall be adjusted on the fifth (5th) anniversary of the Commencement Date and on each fifth (5th) anniversary of the date on which an adjustment is made pursuant to this Section 7.02(a) by adding Five Hundred Thousand Dollars ($500,000) to an amount equal to the product of (x) Five Hundred Thousand Dollars ($500,000) and (y) the percent of increase, if

any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Commencement Date occurs. Any dispute as to the calculation of such adjustment shall be determined by arbitration pursuant to Article 36. Business Interruption/Rent Insurance shall be carried in favor of Landlord, but the proceeds thereof to the extent required hereunder shall be paid to Depository and shall be applied to the Rental payable by Tenant under this Lease until completion of such Restoration by Tenant. All insurance required by any provision of this Lease shall be in such form and shall be issued by such responsible companies authorized to do business in the State of New York as are reasonably acceptable to Landlord. All policies referred to in this Lease shall be procured, or caused to be procured, by Tenant at no expense to Landlord. Subject to Section 7.04 hereof, duplicate originals of such policies or certificates of insurance with respect to such policies together with copies of such policies shall be delivered to Landlord promptly upon receipt from the insurance company or companies, together with proof satisfactory to Landlord that the then current installment of the premiums thereon have been paid, provided, that Landlord shall not, by reason of custody of such policies, be deemed to have knowledge of the contents thereof. Binders and certificates of insurance for renewal policies replacing any policies expiring during the Term shall be delivered within thirty (30) days prior to expiration, and the renewal policies or copies of such policies shall be delivered as soon as practicable after expiration, together with proof satisfactory to Landlord that the then current installment of the premiums thereon have been paid. Premiums on policies shall not be financed in any manner whereby the lender, on default or otherwise, shall have the right or privilege of surrendering or canceling the policies or reducing the amount of loss payable thereunder on less than thirty (30) days' prior written notice to Landlord, provided, however, that premiums may be paid in installments and premium financing may be utilized if the applicable policies cannot be canceled on less than thirty (30) days prior written notice to the Landlord.

(b) Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss, and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments as may be required for the purpose of obtaining the recovery of any such insurance moneys. Tenant shall promptly reimburse Landlord for any and all reasonable costs or expenses which Landlord may sustain or incur in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

(c) Tenant shall not carry separate insurance (other than personal injury liability insurance) concurrent in form or contributing in the event of loss with that required by this Lease to be furnished by Tenant, unless Landlord and Master Landlord are included therein as named insureds and each Mortgagee as an additional insured with loss payable as provided in this Lease. Tenant promptly shall notify Landlord of the carrying of any such separate insurance and shall cause the policies therefor or duplicate originals thereof or certificates of insurance with respect thereto together with copies of such policies to be delivered as required in this Lease.

(d) All property insurance policies as required by this Lease shall provide in substance that all adjustments for claims with the insurers in excess of Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a))

shall be made with Landlord, Tenant and any Mortgagee named as additional insured. Any adjustments for claims with the insurers involving sums of less than Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) shall be made with Tenant. So long as no Event of Default is continuing, Landlord shall approve the amount of any settlement of an insurance claim under a property insurance policy where the amount of the proposed settlement equals or exceeds the cost of Restoration subject to its reasonable approval of other terms of such settlement.

(e) All Business Interruption/Rent Insurance shall provide in substance that all adjustments for claims with the insurers shall be made with Landlord and Tenant.

(f) Tenant shall not violate or permit to be violated any of the conditions or provisions of any insurance policy required hereunder, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies so that at all times companies of good standing, reasonably satisfactory to Landlord, shall be willing to write and continue such insurance.

(g) Each policy of insurance required to be obtained by Tenant as herein provided shall contain to the extent obtainable and whether or not an additional premium shall be required in connection therewith (i) a provision that no act or omission or negligence of Tenant or any other named insured or violation of warranties, declarations or conditions by Tenant or any other named insured shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained, (ii) an agreement by the insurer that such policy shall not be cancelled or modified without at least thirty (30) days prior written notice to Landlord and each Mortgagee, (iii) an agreement that the coverage afforded by the insurance policy shall not be affected by the performance of any work in or about the Building or the occupation or use of the Premises by Tenant, Hotel Operator or any Subtenant, or any occupant of any portion of the Premises, for purposes more hazardous than those permitted by the terms of such policy, (iv) a waiver by the insurer of any claim for insurance premiums against Landlord or any named insured other than Tenant, and (v) a waiver of subrogation by the insurers of any right to recover the amount of any loss resulting from the negligence of Tenant, Landlord, their agents, employees or licensees.

(h) All liability insurance required to be provided and kept in force by Tenant under this Lease shall be written on an "Occurrence" basis, provided, however, that if (i) a basis other than such "Occurrence" basis shall be adopted throughout the insurance industry and (ii) such other basis shall be accepted by most prudent owners of like buildings and improvements, then Tenant may provide and keep in force liability insurance written on such other basis reasonably satisfactory to Landlord.

Section 7.03.

(a) Tenant, on the demand of Landlord after the occurrence of an Event of Default hereunder, shall deposit with Depository on the first day of each month during the Term, an amount equal to one-twelfth (1/12th) of the annual insurance premiums to be paid in respect of any insurance required to be carried by Tenant hereunder, as reasonably estimated by

Landlord, unless such insurance premiums are deposited with a Mortgagee (provided such Mortgagee is an Institutional Lender), and in such event, the Mortgagee for purposes of this Article 7 shall be deemed to be the Depository and bound by the provisions pertaining to the Depository under this Article 7. If at any time the insurance premiums shall be increased or Landlord receives information that the insurance premiums will be increased, with the result that the monthly deposits being paid by Tenant under this Section 7.03(a) would be insufficient to pay such insurance premiums thirty (30) days prior to the due date, the monthly deposits shall thereupon be increased and Tenant shall, within thirty (30) days prior to the due date thereof, deposit immediately with Depository sufficient monies for the payment of the increased insurance premiums. Thereafter, the monthly deposits shall be adjusted so that Depository shall receive from Tenant sufficient monies to pay the insurance premiums at least thirty (30) days before the insurance premiums become due and payable.

(b) Anything in Section 7.03(a) to the contrary notwithstanding, if the Event of Default which gave rise to Landlord having demanded that Tenant make deposits under Section 7.03(a) shall have been cured by Tenant and if for a period of six (6) consecutive months following such cure no Default shall have occurred under this Lease, then, at any time after the expiration of such six (6) month period, promptly upon the demand of Tenant, provided that Tenant is not then in Default under this Lease, all monies deposited under Section 7.03(a) then held by Depository, together with the interest, if any, accrued thereon, promptly shall be returned to Tenant and Tenant shall not be required to make further deposits under Section 7.03(a) unless and until there shall occur a subsequent Event of Default and Landlord shall make demand upon Tenant to make deposits under Section 7.03(a).

(c) If this Lease shall be terminated by reason of any Event of Default or if dispossession occurs pursuant to Section 24.03(b), all deposited monies under this Section 7.03 then held by Depository shall be paid to and applied by Landlord in payment of any and all sums due under this Lease and Tenant shall promptly pay the resulting deficiency. Provided there is no Default, Event of Default or dispossession pursuant to Section 24.03(b), all monies deposited under this Section 7.03, together with interest earned thereon, if any, shall be paid to Tenant promptly after the Expiration Date.

(d) Depository shall hold the monies deposited hereunder in a segregated, interest-bearing account (the purpose of which is to pay the charges for which such amounts have been deposited as they become due), and Depository shall apply the deposited monies for such purpose not later than the Due Date for such charges.

Section 7.04. The insurance required by this Lease, at the option of Tenant, may be effected by blanket or umbrella policies issued to Tenant covering the Premises and other properties owned or leased by Tenant or Affiliates of Tenant, provided that the policies otherwise comply with the provisions of this Lease and specifically allocate to the Premises the coverages required hereby, without possibility of reduction or coinsurance by reason of any other premises named therein, and if the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord and to each Mortgagee certified copies or duplicate originals of such policies in place of the originals, with schedules thereto attached

showing the amount of insurance afforded by such policies applicable to the Premises (or binders and certificates of insurance as provided in Section 7.02(a), and in addition, within thirty (30) days after the filing thereof with any insurance rate making body, copies of the schedule of all improvements affected by any such blanket or umbrella policy of insurance.

ARTICLE 8

USE OF INSURANCE PROCEEDS

Section 8.01. If all or any part of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord immediate notice thereof, except that no notice shall be required if the estimated cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration") shall be less than Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), and unless such casualty shall have occurred within the last five (5) years of the Term and damaged all or Substantially all of the Premises, Tenant shall, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration, with reasonable diligence (subject to Unavoidable Delays) repair, alter, restore, replace and rebuild (collectively, "Restore") the same, at least to the extent of the value and as nearly as possible to the condition, quality and class of the Premises existing immediately prior to such occurrence, with such changes or alterations as Tenant, with the consent of Landlord, which consent shall not be unreasonably withheld, shall elect to make, provided that, after the Restoration, the Premises is in substantial conformity with the Master Development Plan, the Design Guidelines and, in the event such Restoration is commenced within ten (10) years after the date the Building has been Substantially Completed, the Construction Documents. If such casualty occurs within the last five (5) years of the Term and damages all or Substantially all of the Premises, this Lease shall terminate, Tenant shall not be obligated to restore the Premises and Depository shall pay over to Landlord all Restoration Funds. Landlord in no event shall be obligated to Restore the Premises or any portion thereof or to pay any of the costs or expenses thereof. If Tenant shall fail or neglect to Restore with reasonable diligence (subject to Unavoidable Delays) the Premises or the portion thereof so damaged or destroyed, or having so commenced such Restoration, shall fail to complete the same with reasonable diligence (subject to Unavoidable Delays) in accordance with the terms of this Lease, or if prior to the completion of any such Restoration by Tenant, this Lease shall expire or be terminated for any reason, Landlord may, but shall not be required to, complete such Restoration at Tenant's expense subject to and in accordance with Section 21.01 hereof. Each such Restoration shall be done in accordance with the provisions of this Lease. In any case where this Lease shall expire or be terminated prior to the completion of Restoration, Tenant shall account to Landlord for all amounts spent in connection with any Restoration which was undertaken and shall pay over to Landlord, within ten (10) days after demand, the remainder, if any, of the Restoration Funds previously received by it. Tenant's obligations under this Section 8.01 shall survive the expiration or termination of this Lease.

Section 8.02.

(a) Subject to the provisions of Sections 8.01, 8.03, 8.04 and, if applicable, 8.05, Depository shall pay over to Tenant from time to time, upon the following terms, any monies which may be received by Depository from insurance provided by Tenant (other than Business Interruption/Rent Insurance) or cash or the proceeds of any security deposited with Depository pursuant to Section 8.05 (collectively, the "Restoration Funds"); provided, however, that Depository, before paying such moneys over to Tenant, shall be entitled to reimburse itself and Landlord therefrom to the extent, if any, of the necessary, reasonable and proper expenses (including, without limitation, reasonable attorneys' fees) paid or incurred by Depository and Landlord in the collection of such monies. Subject to the provisions of Section 8.01, Depository shall pay to Tenant, as hereinafter provided, the Restoration Funds, for the purpose of the Restoration.

(b) Prior to commencing any Restoration, Tenant shall furnish Landlord with an estimate of the cost of such Restoration, prepared by a licensed professional engineer or registered architect selected by Tenant and reasonably approved by Landlord. Landlord, at Tenant's expense, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Restoration. If there is any dispute as to the estimated cost of the Restoration, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36.

(c) Subject to the provisions of Sections 8.01, 8.03, 8.04 and, if applicable, 8.05, the Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, less retainage equal to ten percent (10%) of such installment until completion of fifty percent (50%) of the Restoration and five percent (5%) of each installment thereafter until completion of the Restoration, upon application to be submitted by Tenant to Depository and Landlord showing the cost of labor and materials purchased and delivered to the Premises for incorporation in the Restoration, or incorporated therein since the last previous application, and due and payable or paid by Tenant. If any vendor's, mechanic's, laborer's, or materialman's lien is filed against the Premises or any part thereof, or if any public improvement lien relating to the Restoration of the Premises is created or permitted to be created by Tenant and is filed against Landlord, or any assets of, or funds appropriated to, Landlord, Tenant shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise). Notwithstanding the foregoing, the existence of any such lien shall not preclude Tenant from receiving any installment of Restoration Funds, provided such lien will be discharged with funds from such installment.

(d) Upon completion of and payment for the Restoration by Tenant, the balance of the Restoration Fund shall promptly be paid over to any Recognized Mortgagees, as their interests may appear, or, to the extent not required by or payable to such Recognized Mortgagee(s), or if there are no Recognized Mortgagees at such time, the balance, if any, to Tenant.

(e) Notwithstanding the foregoing, if Landlord makes the Restoration at Tenant's expense, as provided in Section 8.01, then Depository shall pay over the Restoration Funds to Landlord, upon request, to the extent not previously paid to Tenant pursuant to this Section 8.02, and Tenant shall pay to Landlord, within ten (10) days after demand, any sums in excess of the portion of the Restoration Funds received by Landlord necessary to complete the Restoration. Upon completion of the Restoration, Landlord shall deliver to Tenant a certificate, in reasonable detail, setting forth the expenditures made by Landlord for such Restoration.

Section 8.03. The following shall be conditions precedent to each payment made to Tenant as provided in Section 8.02 above:

(a) There shall be submitted to Depository and Landlord the certificate of the aforesaid engineer or architect approved by Landlord pursuant to Section 8.02(b) stating that (i) the sum then requested to be withdrawn either has been paid by Tenant or is due and payable to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated) who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of said certificate, (ii) no part of such expenditures has been or is being made the basis, in any previous or then pending requisition, for the withdrawal of the Restoration Funds or has been made out of the Restoration Funds previously received by Tenant, and (iii) the engineer or architect believes that the balance of the Restoration Funds held by Depository will be sufficient to pay for the completion of the Restoration in full, and stating in reasonable detail an estimate of the cost of such completion;

(b) there shall be furnished to Landlord an official search, or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord, showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien affecting the Premises or any part thereof, or any public improvement lien with respect to the Premises or the Restoration created or permitted to be created by Tenant affecting Landlord, or the assets of, or funds appropriated to, Landlord, which has not been discharged of record (by bonding or otherwise) except such as will be discharged upon payment of the requisite amount out of the sum then requested to be withdrawn; and

(c) at the time of making such payment, there is no Event of Default or any monetary Default on the part of Tenant.

Section 8.04.

(a) If any loss, damage or destruction occurs, the cost of Restoration of which equals or exceeds Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate, determined as provided in Section 8.02(b) (as such amount shall be increased as provided in Section 7.02(a)), Tenant shall furnish to Landlord the following:

(i) at least thirty (30) Business Days prior to commencement of such Restoration, complete plans and specifications for the Restoration, prepared by a licensed professional engineer or registered architect selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld (except that if any element of the Restoration relates to matters covered by the Design Guidelines, the plans and specifications for such elements shall be prepared by the Architect or an architect which is able to demonstrate an overall body of work recognized by the architecture community as showing excellence of design of hotel/residential projects of the type contemplated by the Building) and any required permits issued by any Governmental Authority with respect to the Restoration and such plans and specifications, and, at the request of Landlord, any other drawings, information or samples to which Landlord is entitled under Article 11, all of the foregoing to be subject to Landlord's review and approval for substantial conformity with the Master Development Plan, the Design Guidelines, and, if such Restoration is commenced within ten (10) years from the date the Building shall have been Substantially Completed, the Construction Documents, such review and approval to be conducted by Landlord within the time periods and otherwise in accordance with the provisions of Article 11;

(ii) at least ten (10) Business Days prior to commencement of such Restoration, (x) a contract or construction management agreement reasonably satisfactory to Landlord in form assignable to Landlord (subject to any prior assignment to any Mortgagee), made with a reputable and responsible contractor or construction manager reasonably approved by Landlord, providing for the completion of the Restoration in accordance with said plans and specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements relating thereto, and (y) payment and performance bonds in forms and by sureties satisfactory to Landlord, naming the contractor as obligor and Landlord and Tenant and Mortgagee, if applicable, as obligees, each in a penal sum equal to the amount by which (A) the difference between the estimated cost of the Restoration and the amount of the insurance proceeds available for the Restoration exceeds (B) Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) or, in lieu thereof, such other security, but not more than the amount of such excess, as shall be reasonably satisfactory to Landlord;

(iii) at least ten (10) Business Days prior to commencement of such Restoration, an assignment to Landlord (subject to any prior assignment to any Mortgagee) of the contract so furnished and the bonds, if any, provided thereunder, such assignment to be duly executed and acknowledged by Tenant and by its terms to be effective only upon any termination of this Lease or upon Landlord's re-entry upon the Premises following an Event of Default prior to the complete performance of such contract, such assignment also to include the benefit of all payments made on account of said contract including payments made prior to the effective date of such assignment; and

(iv) At least ten (10) Business Days prior to commencement of such Restoration, insurance policies issued by responsible insurers, bearing notations

evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Section 11.03.

(b) Notwithstanding that the cost of Restoration is less than Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), such cost to be determined as provided in Section 8.02(b), to the extent that any portion of the Restoration involves work on the exterior of the Building or a change in the height, bulk or setback of the Building from the height, bulk or setback existing immediately prior to the damage or destruction, or in any other manner affects compliance with the Master Development Plan or the Design Guidelines, then Tenant shall furnish to Landlord at least thirty (30) Business Days prior to commencement of the Restoration a complete set of plans and specifications for the Restoration, involving such work or such change, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld (except that if any element of the Restoration relates to matters covered by the Design Guidelines, the plans and specifications for such elements shall be prepared by the Architect or an architect which is able to demonstrate an overall body of work recognized by the architecture community as showing excellence of design of hotel/residential projects of the type contemplated by the Building) and, at Landlord's request, such other items designated in Section 8.04(a)(i), all of the foregoing to be subject to Landlord's review and approval as provided therein.

(c) In the event Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Sections 8.04(a)(i) or 8.04(b) with respect to, or which will in any way affect, any aspect of the exterior of the Building or the height, bulk or setback of the Building or which will affect compliance with the Design Guidelines or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect the interior of the Building provided such proposed modifications do not affect compliance with the Design Guidelines or the Master Development Plan. Landlord shall review the proposed changes (other than changes to the interior of the Building which do not affect compliance with the Design Guidelines or the Master Development Plan) for the sole purpose of determining whether or not they (i) conform to the Master Development Plan and the Design Guidelines and (ii) in Landlord's judgment reasonably exercised, provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications, and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes are not satisfactory in light of the above criteria, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan or the Design Guidelines or do not provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications. Within twenty (20) Business Days after Landlord shall have so notified Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each initial review by Landlord shall be carried out within fifteen (15) Business Days of the date of delivery of the initial plans and specifications by Tenant, and each additional review by Landlord shall be carried out within ten (10) Business Days of the date of delivery of Tenant's revisions thereto, and if Landlord shall not have notified Tenant of its determination within such fifteen (15) or ten

(10) Business Day period, as the case may be, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 8.05. If the cost of any Restoration, determined as provided in Section 8.02(b), exceeds both (i) Two Hundred and Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) and (ii) the net insurance proceeds, then, prior to the commencement of such Restoration, unless Landlord has given its approval of the payment and performance bonds provided for in Section 8.04(a)(ii)(y) and the amounts thereof cover such excess, Tenant shall deposit with Depository, as security for completion of the Restoration, a bond, cash or other security satisfactory to Landlord in the amount by which (A) such excess exceeds (B) Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), to be held and applied by Depository in accordance with the provisions of Section 8.02.

Section 8.06. Subject to Section 8.01 hereof, this Lease shall not terminate or be forfeited or be affected in any manner, and there shall be no reduction or abatement of the Rental payable hereunder, by reason of damage to or total, substantial or partial destruction of the Building or any part thereof or by reason of the untenantability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Subject to the provisions of Section 8.01 hereof regarding termination of this Lease for a casualty occurring in the last five (5) years of the Term, Tenant expressly agrees that its obligations hereunder, including, without limitation, the payment of Rental, shall continue as though the Premises had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

Section 8.07. If for any completed Restoration Tenant has not theretofore delivered same to Landlord, Tenant shall deliver to Landlord, within thirty (30) days of the completion of such Restoration, a complete set of "as built" plans thereof together with a statement in writing from a registered architect or licensed professional engineer that such plans are complete and correct.

ARTICLE 9

CONDEMNATION

Section 9.01.

(a) If the whole or Substantially all of the Premises shall be taken (excluding a taking of the fee interest in the Premises, or any leasehold interest superior to that of the Tenant's, if after such taking, Tenant's rights and obligations under this Lease are not affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the

right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Rental payable by Tenant hereunder shall be equitably apportioned as of the date of such taking.

(b) The term "Substantially all of the Premises" shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws, building regulations then existing or prevailing or the Master Development Plan and after performance by Tenant of all covenants, agreements, terms and provisions contained herein or by law required to be observed or performed by Tenant, (i) prior to the Condominium Date, permit the Restoration of the Building so as to constitute a complete building or buildings capable of producing a fair and reasonable net annual income proportional to the number of square feet not so taken, or (ii) after the Condominium Date, permit the Restoration of the Building so as to constitute an economically viable condominium. Prior to the Condominium Date, the average net annual income produced by the Building during (i) the period commencing on the date of Completion of the Building and ending on the last anniversary of that date which preceded the taking, or (ii) the five (5) year period immediately preceding such taking, whichever is shorter, shall be deemed to constitute a fair and reasonable net annual income for the purpose of determining what is fair and reasonable net annual income. If there be any dispute as to whether or not "Substantially all of the Premises" has been taken, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36.

(c) If the whole or Substantially all of the Premises shall be taken or condemned as provided in Section 9.01(a), the award, awards or damages in respect thereof shall be apportioned as follows: (i) there shall first be paid to Landlord so much of the award which is for or attributable to the value of (A) the Land so taken, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord, and (B) Landlord's Civic Facilities taken in any proceeding with respect to such taking; (ii) there shall next be paid to the Mortgagee which holds a first lien on Tenant's interest in this Lease or Hotel Unit Sublessee's interest in the Hotel Unit Sublease, as the case may be, and/or to the Residential Unit Mortgagees and/or the Construction Mortgagee which have first liens on Residential Units, if applicable, so much of the balance of such award as shall equal the unpaid principal indebtedness secured by such Mortgage or such Residential Unit Mortgages and/or Construction Mortgage, as applicable, with interest thereon at the rate specified therein to the date of payment (up to the value of the collateral covered by the lien of any such Mortgage or Residential Unit Mortgages or Construction Mortgage, as the case may be); (iii) there shall next be paid to Landlord so much of the award which is for or attributable to the value of Landlord's reversionary interest in that part of the Building taken in such proceeding (it being agreed between Landlord and Tenant that, notwithstanding anything herein contained to the contrary, for a period of forty (40) years from the Scheduled Completion Date, the value of Landlord's reversionary interest in the Building shall be deemed to be zero); and (iv) subject to rights of any Mortgagees and any Residential Unit Mortgagees and/or Construction Mortgagee, Tenant shall receive the balance, if any, of the award. If there be any

dispute as to which portion of the award is attributable to the Land and Landlord's Civic Facilities and which portion is attributable to the Building, or as to the value of Landlord's reversionary interest in the Building, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36.

(d) Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 9.02. For purposes of this Article 9, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or Substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or New York State law or (ii) the date on which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or New York State law.

Section 9.03. If less than Substantially all of the Premises shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining without abatement of the Rent or diminution of any of Tenant's obligations hereunder. Tenant, whether or not the award or awards, if any, shall be sufficient for the purpose shall (subject to Unavoidable Delays) proceed diligently to Restore any remaining part of the Building not so taken so that the latter shall be a complete, operable, self-contained architectural unit in good condition and repair in conformity with the Master Development Plan or the Design Guidelines, and to the extent reasonably practicable, in the event such Restoration is commenced within ten (10) years from the date the Building is Substantially Completed, the Construction Documents. In the event of any taking pursuant to this Section 9.03, the entire award for or attributable to the Land taken, considered as unimproved and unencumbered by this Lease and the Master Lease and the fair market value of Landlord's Civic Facilities in any proceeding with respect to such taking, shall be first paid to Landlord, and the balance of the award, if any, shall be paid to Depository, except that if such balance shall be less than Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), such balance shall be payable, in trust, to Tenant (provided that if the Master Lease requires payment in trust to Landlord or a Mortgagee, such balance shall be paid as provided therein) for application to the cost of Restoration of the part of the Building not so taken. Subject to the provisions and limitations in this Article 9, Depository shall make available to Tenant as much of that portion of the award actually received and held by Depository, if any, less all necessary and proper expenses paid or incurred by Depository, the Mortgagee most senior in lien and Landlord in the condemnation proceedings, as may be necessary to pay the cost of Restoration of the part of the Building remaining. Such Restoration shall be done in accordance with and subject to the provisions of Article 8. Payments to Tenant as aforesaid shall be disbursed in the manner and subject to the conditions set forth in Article 8. Any balance of the award held by Depository and any cash and the proceeds of any security deposited with Depository pursuant to Section 9.04 remaining after completion of the Restoration shall be paid to Tenant. Each of the parties shall execute any and all documents that may be reasonably required in order to facilitate collection by them of such awards.

Section 9.04. With respect to any Restoration required by the terms of Section 9.03, the cost of which, as determined in the manner set forth in Section 8.02(b), exceeds both (i) Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) and (ii) the balance of the condemnation award after payment of the expenses set forth in Section 9.03, then, prior to the commencement of such Restoration, Tenant shall deposit with Depository a bond, cash or other security satisfactory to Landlord in the amount by which (A) such excess exceeds (B) Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), to be held and applied by Depository in accordance with the provisions of Section 9.03, as security for the completion of the Restoration.

Section 9.05. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rental payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that:

(a) If the taking is for a period not extending beyond the Term and if such award or payment is made less frequently than in monthly installments, the same shall be paid to and held by Depository as a fund which Depository shall apply from time to time to the payment of Rental, except that, if such taking results in changes or alterations in the Building which would necessitate an expenditure to Restore the Building to its former condition, then, a portion of such award or payment considered by Landlord, in its reasonable opinion, as appropriate to cover the expenses of the Restoration shall be retained by Depository, without application as aforesaid, and applied and paid over toward the Restoration of the Building to its former condition, substantially in the same manner and subject to the same conditions as provided in Section 9.03; and any portion of such award or payment which shall not be required pursuant to this Section 9.05(a) to be applied to the Restoration of the Building or to the payment of Rental until the end of the Term (or, if the taking is for a period terminating prior to the end of the Term, until the end of such period) shall be paid to Tenant; or

(b) If the taking is for a period extending beyond the Term, such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date, and Landlord's and Tenant's share thereof, if paid less frequently than in monthly installments, shall be paid to Depository and applied in accordance with the provisions of Section 9.05(a), provided, however, that the amount of any award or payment allowed or retained for the Restoration of the Building and not previously applied for such purpose shall remain the property of Landlord if this Lease shall expire prior to such Restoration.

Section 9.06. In case of any governmental action, not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, this Lease shall continue in full force and effect without reduction or abatement of Rental and the award shall be paid to

Landlord to the extent of the amount, if any, necessary to restore any portion of Landlord's Civic Facilities to their former condition and any balance remaining shall be paid to Tenant.

Section 9.07. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.08. Landlord, Tenant and any Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 9.09. Notwithstanding anything to the contrary contained in this Article 9, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant and its Subtenants shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its Affiliates or Subtenants and for relocation expenses of Tenant or its Affiliates or Subtenants, and all awards and damages in respect thereof shall belong to Tenant, its Affiliates and its Subtenants, and Landlord hereby waives any and all claims to any part thereof; provided, however, that if there shall be no separate award or allocation for such trade fixtures or personal property, then such claims of Tenant, its Affiliates and its Subtenants, or awards and damages, shall be subject and subordinate to Landlord's claims under this Article 9.

ARTICLE 10

ASSIGNMENT, SUBLETTING, MORTGAGES, ETC.

Section 10.01.

(a) (i) (A) Except as otherwise specifically provided in this Article 10, prior to Completion of the Hotel Portion, the Substantial Completion of the Residential Portion and Substantial Completion of the Public Amenity Space Core and Shell, (x) this Lease or any interest hereunder of Tenant in this Lease, shall not be sold, assigned, or otherwise transferred, whether by operation of law or otherwise, (y) (1) if Tenant is a corporation, none of the issued or outstanding capital stock of such corporation or of any corporation owning a Controlling stock ownership of Tenant, whether held directly or indirectly, shall be (voluntarily or involuntarily) sold, assigned, transferred, pledged or encumbered, whether by operation of law or otherwise, if such sale, assignment, transfer, pledge or encumbrance would result in a change of the Controlling stock ownership of Tenant as held by the shareholders thereof as of the Commencement Date, nor shall any voting trust or similar agreement be entered into with respect to such stock, nor any reclassification or modification of the terms of such stock take place, nor shall there be any merger or consolidation of such corporation into or with another corporation nor shall additional stock (or any warrants, options or debt securities convertible, directly or indirectly, into such stock) in any such corporation be issued if the issuance of such additional stock (or such other securities, when exercised or converted into stock) will result in a change of the controlling stock ownership of Tenant as held by the shareholders thereof as of the Commencement Date, or (2) if Tenant is a partnership or limited liability company or other entity, no general partner's interest in such partnership or member's interest in such limited

liability company, or other interest in such entity or of any partnership or limited liability company or other entity owning a Controlling interest in Tenant, whether directly or indirectly, shall be (voluntarily or involuntarily) sold, assigned or transferred, pledged or encumbered, whether by operation of law or otherwise, if such sale, assignment, transfer, pledge or encumbrance would result in a change in the Controlling interest of Tenant as held by the general partners, members or other entities, as applicable, thereof as of the Commencement Date (each of the foregoing transactions with respect to stock or other securities of a corporation or a general partner's interest in a partnership or a member's interest in a limited liability company, respectively, described in this clause (y) being herein referred to as a "Transfer"), and (z) Tenant shall not sublet the Premises as an entirety or substantially as an entirety, or all or substantially all of the Hotel Portion, all or substantially all of the Residential Portion or the Public Amenity Space (except as otherwise provided in this Article 10 and Article 43, if applicable), without in each case described in clauses (x), (y) and (z), the delivery to Landlord of the documents and information specified in Section 10.01(d) hereof and the prior written consent of Landlord in each case which consent shall be given or withheld in the Landlord's sole discretion.

(B) In addition, after the Condominium Date, without the prior written consent of Landlord, which consent shall be given or withheld by Landlord in its sole discretion, (a) the Hotel Unit shall not be leased by any Person who is the Hotel Unit Owner (other than by Landlord after Landlord shall have become the owner of the Hotel Unit) to any Person except to Landlord under the Hotel Unit Lease, (b) the Hotel Unit may only be subleased by the Hotel Unit Sublessee to any Person in compliance with the applicable provisions of this Lease and the Hotel Unit Sublease, (c) the Hotel Unit and the Hotel Unit Sublessee's interest under the Hotel Unit Sublease may only be sold, conveyed, mortgaged, transferred or otherwise encumbered in compliance with the applicable provisions of this Lease and Article 10 and Article 43 and the Hotel Unit Sublease, (d) the Public Amenity Unit shall not be sold, conveyed, mortgaged, transferred, leased, subleased or otherwise encumbered except as otherwise provided in the applicable provisions of Section 23.06, this Article 10 and Article 43 or pursuant to a Public Amenity Space Agreement approved by Landlord, and (e) the Residential Units may only be sold, conveyed, assigned, transferred, mortgaged, leased, subleased or otherwise encumbered in compliance with the applicable provisions of this Article 10 and Article 43.

(ii) Notwithstanding the provisions of Section 10.01(a)(i)(A)(y), Landlord's consent shall not be required with respect to a Transfer (whether prior to or after the Substantial Completion of the Residential Portion and the Completion of the Hotel Portion and the Substantial Completion of the Public Amenity Core and Shell), provided all of the following conditions are met to Landlord's reasonable satisfaction (it being agreed and acknowledged that if Landlord fails to notify Tenant that Landlord is not satisfied that the following conditions are met within 15 Business Days after receiving Tenant's notice with respect a Transfer and documentation reasonably evidencing the satisfaction of the following conditions, then Landlord's satisfaction shall be deemed to have occurred):

(A) any such Transfer shall not violate the provisions of Section 10.01(c) and no Default as to which notice shall have been given (other than Events of Default in Section 24.01(d), (e), (f) or (g) or

Defaults of which Landlord has no knowledge, as to which notice is not required) has otherwise occurred and be then continuing hereunder (unless such Default is cured simultaneously with such Transfer);

(B) after giving effect to any such Transfer:

(1) The Tenant shall be a limited partnership or a limited liability company;

(2) CMJ and/or PEA shall Control the Manager of the Tenant;

(3) The Manager shall Control the Tenant;

(4) CMJ and/or PEA shall have a direct or indirect economic investment in Tenant (in the form of cash or equity subscription notes) in an amount not less than the greater of (x) $2,000,000 or (y) 4% (four percent) of the total capital invested in or loaned to the Tenant by the holders of direct or indirect ownership or equity interests in Tenant (or its Affiliates) (excluding, however, the amount of any loan or other investment by Pro Victor with respect to Tenant); and

(5) Tenant shall have delivered to Landlord documentation reasonably evidencing the satisfaction of the foregoing conditions including the applicable provisions of Section 10.01(d).

(iii) Tenant has advised Landlord that Tenant desires to consummate a financing transaction (the "Pro Victor Transaction") with respect to the Hotel Portion on terms previously described by Tenant to Landlord in writing. Landlord hereby consents to such Pro Victor Transaction, provided however, all of the following conditions are met to Landlord's reasonable satisfaction (it being agreed and acknowledged that if Landlord fails to notify Tenant that Landlord is not satisfied that the following conditions are met within fifteen (15) Business Days after receiving Tenant's notice with respect to the Pro Victor Transaction and documentation reasonably evidencing the satisfaction of the following conditions, then Landlord's satisfaction shall be deemed to have occurred):

(1) No Default of Section 10.01(c)(i) is caused thereby hereunder;

(2) The Completion of the Hotel Portion has occurred;

(3) The Condominium Date has occurred in accordance with the terms hereof;

(4) Pro Victor acquires title to the Hotel Unit and becomes the Hotel Unit Sublessee or a limited liability company or a limited partnership which is Controlled by CMJ and/or PEA (directly or through the Control by CMJ and/or PEA of the Manager thereof) (a "Millennium Hotel Unit Owner") acquires title to the Hotel Unit;

(5) In the event a Millennium Hotel Unit Owner does not acquire title to the Hotel Unit pursuant to clause (4) of this Section 10.01(a)(iii), the Hotel Unit is further sub-subleased by Pro Victor, as the Hotel Unit Sublessee, to a Millenium Hotel Unit Owner, under a Sublease pursuant to which such sub-sublessee assumes all obligations of the Hotel Unit Sublessee under the Hotel Unit Sublease in a manner reasonably satisfactory to Landlord;

(6) the condition described in Section 10.01(a)(ii)(B)(4) shall continue to be satisfied with respect to the Declarant,

(7) Landlord receives copies of all material documents implementing such transactions, including the documents applicable thereto and referred to in Section 10.01(d); and

(8) No Default as to which notice shall have been given (other than the Events of Default in Sections 24.01(d), (e), (f) or (g) or Defaults of which Landlord has no knowledge as to which no notice shall be necessary) shall occur or be continuing under this Lease (unless such Default is cured simultaneously with such transaction).

(iv) The foregoing provisions of Section 10.01(a)(i)(A)(y) shall not apply and Landlord's consent shall not be required with respect to any Transfer resulting from the removal by the then existing limited partners or members of Tenant of CMJ or PEA from the Manager for Cause pursuant to the terms and provisions of the partnership or operating agreement of Tenant or the Manager, provided that

(1) No Default is caused thereby hereunder;

(2) No default is caused thereby under the Construction Mortgage or any Mortgage;

(3) If any of the events described in the definition of Cause affect only CMJ or PEA and not both, the other (as to whom Cause shall not have occurred) is not removed; and

(4) If the events described in the definition of Cause affect both CMJ and PEA, Tenant shall engage a Qualified Developer approved by Landlord to effect the Completion of the Building, which approval shall not be unreasonably withheld.

(b)(i) From and after the Substantial Completion of the Residential Portion, the Completion of the Hotel Portion and Substantial Completion of the Public Amenity Core and Shell, Landlord's consent shall not be required with respect to any Transfer or sale or assignment of this Lease or subletting of all or any portion of the Premises except with respect to the Public Amenity Space as provided in Section 23.06; provided, however, that in each case no Default with respect to which Tenant shall have received written notice (other than the Events of Default in Sections 24.01 (d), (e), (f) or (g) or Defaults as to which Landlord has no knowledge, as to which notice is not required) shall have occurred and then be continuing hereunder (unless such Default is cured simultaneously with any such transaction (other than the Events of Default in Sections 24.01(d), (e), (f) or (g)), and in each case all of the applicable provisions of this Article 10 shall have been otherwise complied with.

(ii) From and after the Substantial Completion of the Residential Portion, the Completion of the Hotel Portion and Substantial Completion of the Public Amenity Core and Shell, Landlord's consent shall not be required after the Condominium Date, with respect to any Transfer; provided, however, that in each case no Default with respect to which Tenant shall have received written notice (other than the Events of Default in Sections 24.01 (d), (e), (f) or (g) or Defaults as to which Landlord has no knowledge, as to which notice is not required) shall have occurred and then be continuing hereunder (unless such Default is cured simultaneously with any such transaction (other than the Events of Default in Sections 24.01(d), (e), (f) or (g)), and in each case all of the applicable provisions of this Article 10 and Article 43 shall have been otherwise complied with.

(iii) From and after the Substantial Completion of the Residential Portion, the Completion of the Hotel Portion and Substantial Completion of the Public Amenity Core and Shell, Landlord's consent shall not be required after the Condominium Date, with respect to any sale, conveyance or transfer of all or any portion of the Hotel Unit; provided, however, that in each case no Default with respect to which Tenant shall have received written notice (other than the Events of Default in Sections 24.01 (d), (e), (f) or (g) or Defaults as to which Landlord has no knowledge, as to which notice is not required) shall have occurred and then be continuing hereunder (unless such Default is cured simultaneously with any such transaction (other than the Events of Default

in Sections 24.01(d), (e), (f) or (g)), and in each case all of the applicable provisions of this Article 10 and Article 43 shall have been otherwise complied with.

(iv) From and after the Substantial Completion of the Residential Portion, the Completion of the Hotel Portion and Substantial Completion of the Public Amenity Core and Shell, Landlord's consent shall not be required after the Condominium Date, with respect to any sale, conveyance, or transfer, lease or sublease of all or any portion of the Residential Units; provided, however that with respect to (x) sales from Tenant, Declarant or any other Person to any Person of more than fifteen percent (15%) of the Residential Units or (y) leases or sublets from Tenant, Declarant or any other Person to any Person of more than fifteen percent (15%) of the Residential Units, in each case no Default with respect to which Tenant shall have received written notice (other than the Events of Default in Sections 24.01 (d), (e), (f) or (g) or Defaults as to which Landlord has no knowledge, as to which notice is not required) shall have occurred and then be continuing hereunder (unless such Default is cured simultaneously with any such transaction (other than the Events of Default in Sections 24.01(d), (e), (f) or (g)), and in each case all of the applicable provisions of this Article 10 and Article 43 shall have been otherwise complied with.

(v) Notwithstanding anything herein to the contrary, from and after the Condominium Date until the Completion of the Hotel Portion, (x) the Residential Units (other than any individual Residential Units sold to purchasers in the normal course pursuant to the Condominium Plan and other than any individual Residential Units or all of the Residential Units sold as a result of the foreclosure of the lien of a Recognized Mortgage), on the one hand, and (y) the Hotel Unit and the sublessee's interest under the Hotel Unit Sublease, on the other hand, shall be owned beneficially and of record by the same Person (except that the creation of any interests to implement the transactions contemplated in Section 10.01(a)(iii) shall not be deemed to violate the provisions of this sentence). In addition, notwithstanding anything herein to the contrary, the Hotel Unit and the sublessee's interest under the Hotel Unit Sublease shall at all times be owned beneficially and of record by the same Person. After the Condominium Date the applicable provisions of this Article 10 shall otherwise apply to any sale, assignment, Transfer, sublease or other transfer or encumbrance of the Hotel Unit in the Condominium, except as otherwise provided in this Article 10 or Article 43 and Unit Owners of the Residential Units shall not be obligated to comply with the provisions of this Article 10, except as otherwise provided in Section 10.01(b)(iv), Section 10.01(c)(ii), Section 10.01(d) and Article 43 and with respect to a Construction Mortgage, the applicable provisions of this Article 10.

(c) (i) Except as otherwise specifically provided herein, in no event, at any time during the Term, whether before or after Completion of the Building, shall Tenant make a Transfer, assign this Lease or any portion of its interest hereunder (whether by operation of law

or otherwise) or sublet the Premises as an entirety or substantially as an entirety (whether or not for occupancy by the Subtenant thereunder) to any Person (hereinafter, a "Prohibited Person") in which an ownership interest, in the aggregate, of five percent (5%) or greater is then held, directly or indirectly, or is Controlled by any Person (i) who has ever been convicted of a felony, (ii) against whom any action or proceeding is pending to enforce rights of the State of New York or any agency, department, public authority or public benefit corporation thereof arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation, (iii) with respect to whom any notice of substantial monetary default which remains uncured has been given by the State of New York or any agency, department, public authority or any public benefit corporation thereof arising out of a mortgage obligation to the State of New York or to any such agency, department, public authority or public benefit corporation or (iv) is debarred or suspended from contracting with the State of New York or any agency, department, public authority or public benefit corporation, or placed on an ineligibility status, or is a Person with whom the State of New York or any agency, department, public authority or public benefit corporation is otherwise prohibited by law from contracting (whether by reason of such Person's own acts or status or by reason of the acts or status of any other Person the acts or status of which shall be imputed to such Person pursuant to any applicable Requirement governing the making of contracts by the State of New York or any agency, department, public authority or public benefit corporation). The determination by Landlord whether or not a person is a Prohibited Person shall be made within twenty (20) days after Tenant requests such determination and provides or causes to be provided to Landlord all requisite information and documentation required for such determination. If Landlord shall not have notified Tenant of such determination within such period, it shall be deemed to have determined that such Person is not a Prohibited Person.

(ii) Upon the Condominium Date, the provisions of Section 10.01(c)(i) shall apply to any Person (x) purchasing from Tenant, Declarant or any other Person more than fifteen percent (15%) of the Residential Units or (y) leasing or subletting from Tenant, Declarant or any other Person more than fifteen percent (15%) of the Residential Units, but shall not otherwise apply to any Residential Unit. The provisions of Section 10.01(c)(i) shall at all times apply to the Commercial Units.

(d) In each instance wherein Tenant desires to effect an assignment or a sublease of the Premises as an entirety or substantially as an entirety, or effect an assignment or a sublease of the Hotel Portion, the Residential Portion or the Public Amenity Space or effect a Transfer (or, after the Condominium Date, in each instance wherein Tenant, Declarant or any other Person desires to effect a sale, assignment, lease or sublease of the Hotel Unit, the Public Amenity Unit or 15% or more of the Residential Units (generically and collectively, a "Post Condominium Date Transaction")), then, in each such case, Tenant shall, prior to the effective date of such transaction, notify Landlord of the proposed transaction and submit to Landlord the following documents and information (which documents may be unexecuted but shall, in all other respects, be in substantially final form):

(i) in the case of an assignment, (A) a copy of the proposed instrument(s) of assignment, containing, inter alia, the name, address and telephone number of the assignee, (B) a copy of the proposed instrument(s) of assumption of Tenant's obligations under this Lease by said assignee, and (C) an affidavit of the assignee or an authorized officer or general partner thereof, setting forth (x) in the case of a partnership, the names and addresses of all general partners thereof and all other partners of the assignee having a five percent (5%) or greater record or direct or indirect beneficial ownership interest in the assignee, (y) in the case of a corporation (other than a corporation whose common stock is traded on a recognized exchange or over-the-counter exchange or is registered under the Securities Act of 1933, as amended) the names and addresses of all persons having five percent (5%) or greater record or direct or indirect beneficial ownership of stock in, and all directors and officers of, the assignee; and (z) in the case of a limited liability company or any other entity, the names and addresses of all Persons having a five percent (5%) or greater record or, direct or indirect, beneficial ownership interest in, and all managing members of, the assignee;

(ii) in the case of a subletting of the Premises as an entirety or substantially as an entirety or of the Hotel Portion, the Residential Portion or the Public Amenity Space, (A) a copy of the proposed sublease, containing, inter alia, the name, address, and telephone number of the subtenant and (B) an affidavit of the subtenant or an authorized officer, trustee, agent, general partner or managing partner thereof, setting forth the same information with respect to the partners, shareholders, owners, members, officers and directors of the subtenant as is required with respect to assignees under Section 10.01(d)(i);

(iii) in the case of a Transfer, (A) a copy of each material, proposed document by which such Transfer is to be accomplished, and (B) an affidavit of an authorized officer, trustee, agent, managing member or general partner of Tenant, setting forth the same information with respect to the partners, shareholders, owners members, officers and directors of Tenant and any corporation, limited liability company or other entity which, directly or indirectly, is Tenant, or any general partners interest in a partnership which is Tenant or any member's interest in a limited liability company which is Tenant as is required with respect to assignees under Section 10.01(d)(i); and

(iv) in the case of a Post Condominium Date Transaction, a copy of each material proposed document by which such transaction is to be accomplished.

(v) in all such cases, such other documents and information as Landlord may reasonably request to permit Landlord to determine whether such assignment, sublease, Transfer, or sale is in accordance with the provisions of this Article 10.

Landlord shall within fifteen (15) Business Days after receipt of all requisite information and documentation required by this Section 10.01(d) notify Tenant whether it grants its consent, if such consent is required hereunder, specifying, in the event that Landlord denies its

consent to such transaction or determines that any such documentation or any such information does not establish compliance with the provisions of this Article 10, the reason for such denial or determination. If Landlord shall not have notified Tenant of such denial or determination within such period, it shall be deemed to have consented to the proposed transaction if such consent is required and to have determined that the documents and the information submitted establish compliance with the provisions of Section 10.01(c) and Section 10.01(d). Tenant shall promptly deliver to Landlord executed documents substantially the same as those previously delivered to Landlord for review.

(e) (i)(A) Subject to compliance by a Mortgagee with the provisions of Sections 10.01(b)(v), 10.01(c)(i), 10.10, 10.11 and Article 43 (if and to the extent applicable), the foregoing requirement of consent by Landlord shall not apply to (x) until the Condominium Date, the acquisition of Tenant's interest in the Premises under this Lease by such Mortgagee and, (y) from and after the Condominium Date, the acquisition of Hotel Unit Sublessee's interest in the Hotel Unit under the Hotel Unit Sublease and the Hotel Unit Owner's title to the Hotel Unit, by such Mortgagee, or with respect to (x) and (y) by any nominee of such Mortgagee or by a Qualified Developer through the foreclosure of its Mortgage or through a deed or instrument of transfer delivered in lieu of such foreclosure, so long as such Mortgagee (or nominee) or the Qualified Developer shall, in the instrument transferring to such Mortgagee or such Qualified Developer the interest of Tenant hereunder or the interest of the Hotel Unit Sublessee under the Hotel Unit Sublease, as applicable, assume and agree to perform all of the terms, covenants and conditions of this Lease or the Hotel Unit Sublease, as the case may be, thereafter to be observed or performed by Tenant or the Hotel Unit Sublessee, as the case may be. Each reference in this Section 10.01(e) to "Mortgagee" shall be deemed to include a wholly owned subsidiary (directly or indirectly) of such Mortgagee or its direct parent, provided such Mortgagee has delivered to Landlord a written notice advising that such a subsidiary should be so deemed and certifying (i) that such subsidiary is wholly owned (direct or indirect) by such Mortgagee or its direct parent and (ii) that such subsidiary is authorized to act in the place and stead of such Mortgagee. Subject to the foregoing provisions, after Substantial Completion of the Building and the Completion of the Hotel Portion, a Mortgagee shall have the right to appoint a designee to acquire the interest in the Premises or the Units on which it has a lien, subject to compliance with the provisions of Sections 10.01(b)(v), 10.01(c)(i), 10.10, 10.11 and Article 43 (if and to the extent applicable).

(B) In addition, subject to the compliance of the Construction Mortgagee with the provisions of Sections 10.01(b)(v), 10.01(c)(i), 10.10, and 10.11 and Article 43 (if and to the extent applicable), the foregoing requirement of consent by Landlord shall not apply, after the Condominium Date, to the acquisition of the Declarant's interest in any or all of the Residential Units by the Construction Mortgagee or by any nominee of such Construction Mortgagee or by a Qualified Developer through the foreclosure of the Construction Mortgage or through a deed or instrument of transfer delivered in lieu of such foreclosure, so long as such Construction Mortgagee (or nominee) or the Qualified Developer shall, in the instrument transferring to such Construction Mortgagee or such Qualified Developer the interest of Declarant in such Residential Unit or Units, assume and agree to perform all of the terms, covenants and conditions of this Lease applicable to Declarant hereunder with respect to the Residential Portion. Subject

to the foregoing provisions, after Substantial Completion of the Residential Portion, the Construction Mortgagee shall have the right to appoint a designee to acquire the interest in the Residential Units on which it has a lien, subject to compliance with the provisions of Sections 10.01(b)(v), 10.01(c)(i), 10.10, 10.11 and Article 43 (if and to extent to applicable).

(ii) Notwithstanding anything to the contrary contained in this Lease or the provisions of 10.01(a)(i), any Mortgagee who has succeeded to Tenant's interest in this Lease (or after the Condominium Date, the Hotel Unit and the Hotel Unit Sublessee's interest under the Hotel Unit Sublease or, in the case of the Construction Mortgagee, any or all Residential Units) in accordance with the provisions hereof shall have the right to sell, transfer or assign its interest in this Lease (or the Hotel Unit and the Hotel Unit Sublessee's interest under the Hotel Unit Sublease or, in the case of the Construction Mortgagee, any or all of such Residential Units) to a Qualified Developer that assumes in writing and agrees to perform all of the applicable terms, covenants and conditions of this Lease (or the Hotel Unit Sublease, as applicable) thereafter to be observed and performed by Tenant, Hotel Unit Sublessee or Declarant hereunder, including the obligations of Tenant, Hotel Unit Sublessee or Declarant hereunder in connection with the Completion of the Building, if and to the extent applicable. For purposes of this Article 10, "Qualified Developer" shall mean a Person that (x) is not a Prohibited Person and with whom Landlord is not otherwise prevented by law or adopted policy of Landlord from transacting business or entering into a contract, (y) possesses the experience, qualifications and financial resources necessary for the proper performance of Tenant's or Declarant's applicable obligations under this Lease or the Hotel Unit Sublease, as applicable, including the obligation to effect the Completion of the Building and (z) who is otherwise approved by Landlord, which approval shall not be unreasonably withheld or delayed. A Mortgagee may make a request of Landlord in writing for approvals of a Person as a Qualified Developer, which approval shall be granted or denied by Landlord not more than thirty (30) days following such request.

(f) Except as specifically provided under Article 43 hereof, Tenant shall not, without the prior consent of Landlord, which consent may be withheld by Landlord in Landlord's sole discretion, submit Tenant's leasehold estate in the Premises, or any part thereof, to the provisions of Article 9-B of the Real Property Law of the State of New York, as it may be amended, or to a cooperative form of ownership.

Section 10.02. No assignment of this Lease, subletting of the Premises as an entirety or substantially as an entirety or of the Hotel Portion or the Public Amenity Space or the Residential Portion or any Transfer and no sale, conveyance, assignment, lease or sublease of any Unit shall have any validity except upon compliance with the applicable provisions of this Article 10 and Article 43.

Section 10.03. Any consent by Landlord under Section 10.01 above shall apply only to the specific transaction thereby authorized and shall not relieve Tenant, or any Subtenant, any transferee or any assignee from any requirement hereunder of obtaining the consent of Landlord to the extent required under Section 10.01 hereof to any further sale or assignment of this Lease or Transfer or subletting of the Premises as an entirety or substantially as an entirety,

or of the Hotel Portion, the Residential Portion or the Public Amenity Space or the sale, assignment, leasing or subleasing of any Unit.

Section 10.04. Subject to the compliance with the other terms and provisions hereof, Tenant may, without Landlord's consent, at any time, and from time to time, (i) enter into agreements for the letting of hotel rooms and retail commercial space as part of the operation of the Hotel, and the letting of residential apartment units, or the occupancy of such spaces pursuant to licenses or concessions for periods shorter than or equal to the remainder of the Term at the time of such agreements, provided that such agreements shall not be effective unless and until (x) with respect to such agreements involving the Residential Portion, or any portion thereof, until the Substantial Completion of the Residential Portion and (y) with respect to such agreements involving the Hotel Portion, or any portion thereof, until the Completion of the Hotel Portion and (ii) enter into agreements for the subleasing of the Premises as an entirety or substantially as an entirety, or any portion thereof, or of the Hotel Portion, or any portion thereof, the Residential Portion, or any portion thereof, or the Public Amenity Space (subject to Section 23.06) for periods shorter than or equal to the remainder of the Term at the time of such agreements provided that except as otherwise provided in this Lease such agreements shall not be deemed effective unless and until the Substantial Completion of the Building and Completion of the Hotel Portion (all of such agreements entered into in accordance with this Lease being herein referred to collectively as "Subleases", and the occupants pursuant to Subleases as "Subtenants"). Each Sublease shall obligate the Subtenant pursuant thereto to occupy and use the premises included therein for purposes consistent with this Lease, the Requirements, the Master Lease, the Certificate of Occupancy and the Master Development Plan. Each Sublease shall require each Sublease to comply with and be bound by all the terms, covenants and conditions of this Lease applicable to the space demised under the applicable Sublease. Tenant shall promptly and diligently enforce all of its rights as the landlord under all Subleases in accordance with the terms thereof.

Section 10.05. The fact that a violation or breach of any of the terms, provisions or conditions of this Lease or of the Master Lease results from or is caused by an act or omission by any Subtenant, Unit Owner or subtenant of a Subtenant, or any other occupant of the Building shall not relieve Tenant of Tenant's obligations hereunder, including the obligation to cure the same. Tenant shall take any and all reasonable steps necessary to prevent any such violation or breach.

Section 10.06. Landlord, after an Event of Default by Tenant, may, subject to the rights of any Mortgagee (provided such Mortgagee is an Institutional Lender), collect subrent and all other sums due under Subleases, and apply the net amount collected to Rental, but, except as provided in Section 43.05(b)(i), no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease or the acceptance by Landlord of any Subtenant as tenant hereunder, or a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 10.07. To secure the prompt and full payment by Tenant of the Rental and the faithful performance by Tenant of all the other terms and conditions herein contained on its

part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents made in connection with any Mortgage (provided the Mortgagee thereunder is an Institutional Lender), all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and insure the collection by Landlord of the rentals and other sums payable under the Subleases. The exercise of the right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof and, should said right of entry and possession be denied Landlord, its agent or representative, to the extent permitted by applicable law, Landlord, in the exercise of such right, may use all requisite force to gain and enjoy the same without responsibility or liability to Tenant, its servants, employees, guests or invitees, or any Person whomsoever. The assignment made herein shall become operative and effective only if (a) an Event of Default shall occur and remain uncured, or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof by reason of an Event of Default, or (c) there occurs repossession under a dispossess warrant or other re-entry or repossession by Landlord under the provisions hereof or applicable law, and then only as to such of the Subleases that Landlord has agreed to take over and assume.

Section 10.08. At any time and from time to time, upon Landlord's written demand, Tenant shall within ten (10) days after receipt of any such demand deliver to Landlord a schedule of all Subleases, setting forth the names of all Subtenants. Upon the reasonable advance written request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect all Subleases during business hours and, at Tenant's expense, to make copies thereof.

Section 10.09. (a) All Subleases shall further provide that (a) they are subject and subordinate to this Lease and to the Master Lease, (b) the Subtenants will not pay rent or other sums under the Subleases for more than one (1) month in advance (excluding security and other deposits required under such Sublease), (c) the obligations of the sublessor thereunder shall not be binding upon the sublessor named therein with respect to any period subsequent to the sale, conveyance, assignment or transfer by such sublessor (or upon any subsequent sublessor after the sale, conveyance, assignment or transfer by such subsequent sublessor) of its interest in the premises demised thereunder and in the event of any such sale, conveyance, assignment or transfer, the sublessor thereunder shall be entirely freed and relieved of all such obligations and (d) at Landlord's option, on the termination of this Lease, pursuant to Article 24, (i) the Subtenants will attorn to, or enter into a direct sublease on identical terms with, Landlord, and (ii) Landlord shall require either that Tenant pays over any existing subtenants' security deposits to Landlord, or Subtenants pay over new security deposits to Landlord if required under the Sublease. In addition, all Subleases shall provide that (x) the Subtenant thereunder acknowledges that the premises demised under its Sublease (i) is until the Condominium Date, subleased to Subtenant under this Lease and (ii) from and after the Condominium Date subleased to Subtenant under the Hotel Unit Sublease whereupon Subtenant no longer has any right, title or interest under this Lease, and (y) that the Sublease, and all rights of the Subtenant thereunder, are and shall be subject and subordinate in all respects to this Lease, the Master Lease, Title Matters, the Hotel Unit Lease, the Hotel Unit Sublease, and the Condominium Documents and to all

renewals, modifications, replacements and extensions of this Lease, the Master Lease, Title Matters, the Hotel Unit Lease, the Hotel Unit Sublease and the Condominium Documents and (y) at Landlord's option, on the termination of the Hotel Unit Sublease pursuant to an Event of Default, (1) the Subtenants will attorn to, or enter into a direct sublease on identical terms, with Landlord, and (2) Landlord shall require either that Tenant pays over any existing subtenant's security deposits to Landlord, or Subtenants pay over new security deposits to Landlord if required under the Sublease.

(b) With respect to any Sublease of more than five thousand (5,000) square feet (other than a Sublease of the Premises as an entirety or substantially as an entirety, or of the Hotel Portion, the Residential Portion or the Public Amenity Space) (a) made to an unrelated third party (including members and member firms) at a rental not less than the prevailing market rental as of the date of such Sublease, (b) which is in accordance with all of the requirements of this Lease, (c) which does not (x) cede control to Subtenant of space within the Hotel Portion used to operate the Hotel, or any part thereof, and (y) by its terms survive the termination of the Hotel Operator Management Agreement and (d) which confers no greater rights upon such Subtenant than are conferred upon Tenant under this Lease nor, except with respect to provision of basic services customarily provided to commercial tenants in such circumstances, imposes more onerous obligations upon Landlord, as successor landlord under the Sublease, than are imposed on Landlord in this Lease (a "Qualifying Sublease"), at the request of Tenant, Landlord and such Subtenant shall execute an agreement (the "Qualifying Sublease Non-Disturbance and Attornment Agreement") wherein Landlord agrees to recognize such Subtenant as the direct tenant of Landlord under its Sublease upon the termination of this Lease or the Hotel Unit Sublease, as the case may be, pursuant to Article 24 or otherwise, provided that at the time of such termination no default exists under such Subtenant's Sublease which at such time would permit the landlord thereunder to terminate the Sublease or to exercise any remedy for dispossession provided for therein, and such Subtenant agrees to attorn to Landlord and to recognize Landlord as such Subtenant's landlord under its Sublease. In no event shall Landlord be required to enter into any Qualifying Sublease Non-Disturbance and Attornment Agreement prior to the Substantial Completion of the Building and the Completion of the Hotel Portion unless (x) with respect to Subleases involving the Residential Portion, or any portion thereof, the Qualifying Sublease Non-Disturbance and Attornment Agreement does not become effective unless and until the Substantial Completion of the Residential Portion and (y) with respect to Subleases involving the Hotel Portion, or any portion thereof, the Qualifying Sublease Non-Disturbance and Attornment Agreement does not become effective unless and until the Completion of the Hotel Portion. The Qualifying Sublease Non-Disturbance and Attornment Agreement shall provide that neither Landlord, nor anyone claiming by, through or under Landlord, shall be:

(i) liable for any act or omission or negligence of any prior landlord (including, without limitation, the then defaulting landlord),

(ii) subject to any offsets, defenses, counterclaim, credit or deduction that such Subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord),

(iii) except with respect to a prepayment of the next installment of PILOT, bound by any payment that such Subtenant might have paid to any prior landlord (including, without limitation, the then defaulting landlord), or any other Person of (i) rent, common area charges, or any other charge payable under such Subtenant's sublease for more than the current month unless the successor landlord has actually received the same or (ii) any security deposit which shall not have been delivered to Landlord,

(iv) bound by any covenant to undertake or complete any construction of or perform any work in the Building or any portion thereof demised by the Sublease or to prepare such space for occupancy, or to repair, restore, rebuild or replace the Building or any portion thereof demised by the Sublease for any reason,

(v) bound by any obligation to make any payment to such Subtenant, or

(vi) bound by any amendment to any such Sublease or modification thereof which reduces the basic rent, additional rent, supplemental rent or other charges payable under the Sublease (except to the extent equitably reflecting a reduction in the space covered by the Sublease or to the extent Common Charges are reduced for the Units from and after the Condominium Date), or shortens or lengthens the term thereof, or otherwise increases the obligations of landlord thereunder, made without the written consent of Landlord.

Subject to the terms hereof, within fifteen (15) days after Tenant submits to Landlord a copy of a Sublease (which may be unexecuted but which shall, in all other respects be in final form), Landlord shall notify Tenant whether same is a Qualifying Sublease. If Landlord shall determine that such Sublease is a Qualifying Sublease, then, promptly after notice to Tenant of such determination, Landlord and such Subtenant each shall duly execute, acknowledge and deliver to one another one or more counterparts of the Qualifying Sublease Non-Disturbance and Attornment Agreement. If Landlord shall determine that same is not a Qualifying Sublease, Landlord shall together with its notice to Tenant specify the reason for such determination. If there be any dispute as to whether any Sublease is a Qualifying Sublease, such dispute shall be resolved by arbitration in accordance with the provisions of Article 36. In addition, in no event shall there be any personal liability under the Sublease on the part of Landlord, and the liability of Landlord under a Sublease shall be limited to the interest of Landlord in the portion of the Building demised by the Sublease.

Section 10.10.

(a) Tenant shall have the right to mortgage or otherwise encumber Tenant's interest in this Lease to a Mortgagee and to no other Person, subject, however, to the terms and provisions hereof. If Tenant shall so mortgage Tenant's interest in this Lease to a Mortgagee, Tenant or such Mortgagee shall give Landlord prompt notice of such Mortgage and furnish Landlord with a complete and correct copy of each such Mortgage, certified as such by Tenant or such Mortgagee, together with the name and address of such Mortgagee. After receipt of the foregoing, Landlord shall give to such Mortgagee, at the address of such Mortgagee set forth in such notice, and otherwise in the manner provided by Article 25, a copy of each notice of Default at the same time as, and whenever, any such notice of Default shall thereafter be given by

Landlord to Tenant, and no such notice of Default by Landlord shall be deemed to have been duly given to Tenant unless and until a copy thereof shall have been so given to each Mortgagee. Each Mortgagee (i) shall thereupon have a period of ten (10) days more than given to Tenant in each instance in the case of a Default in the payment of Rental and thirty (30) days more than given to Tenant in each instance in the case of any other Default, for remedying the Default, or causing the same to be remedied, or causing action to remedy a Default mentioned in Section 24.01(b) or (c) to be commenced, and (ii) shall, within such periods and otherwise as herein provided, have the right to remedy such Default, cause the same to be remedied or cause action to remedy a Default mentioned in Section 24.01(b) or (c) to be commenced. Landlord shall accept performance by a Mortgagee (or its designee or nominee) of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(b) Notwithstanding the provisions of Section 10.10(a) and Section 24.01 hereof, Landlord shall not give notice to Tenant of the expiration and termination of this Lease as provided in Section 24.03(a), if a Mortgagee (provided that Landlord shall have given such Mortgagee a copy of any notice of Default, if required, in accordance with Section 10.10(a)) within twenty (20) Business Days after the expiration of the time given to Tenant pursuant to the provisions of this Lease to remedy the event or condition which would otherwise constitute a Default hereunder, shall have delivered to Landlord its written agreement to take the action described in the following clauses (i) or (ii), herein, and thereafter, in good faith, shall have commenced promptly either (i) to cure the Default and to prosecute the same to completion, or (ii) if possession of the Premises is required in order to cure the Default, to institute foreclosure proceedings and obtain possession directly or through a receiver, and to prosecute such proceedings with diligence and continuity and, upon obtaining such possession, commence promptly to cure the Default and to prosecute the same to completion with diligence and continuity, provided that during the period in which such action is being taken (and any foreclosure proceedings are pending), all of the other obligations of Tenant under this Lease, to the extent they are reasonably susceptible to being performed by the Mortgagee, are being performed. However, at any time after the delivery of the aforementioned agreement, the Mortgagee may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, and in such event, the Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to Landlord (except for any obligations accruing prior to the date it delivers such notice), and, thereupon, Landlord shall have the unrestricted right to terminate this Lease subject to and in accordance with Section 24.03(a) and to take any other action and exercise any of its remedies it deems appropriate by reason of any Default, and upon any such termination the provisions of Section 10.11 shall apply. Notwithstanding anything herein contained to the contrary, provided such Mortgagee shall have otherwise complied with the provisions of this Section 10.10, such Mortgagee shall have no obligation to cure any Defaults which are not susceptible to being cured by such Mortgagee. In no event shall any of the foregoing provisions be deemed to extend beyond the 10 day period referred to in Section 10.10(a)(i), the time periods accorded to a Mortgagee to cure any Default in the payment of Rental.

(c) Except as provided in Section 10.10(b), no Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, the owner of the leasehold estate created hereby. In the event that a Mortgagee shall become the owner of such leasehold estate, such Mortgagee shall not be bound by any modification or amendment of this Lease made subsequent to the date of the Mortgage and delivery to Landlord of the notice provided in Section 10.10(a) hereof and prior to its acquisition of such interest unless the Mortgagee shall have consented to such modification or amendment at the time it was made or at the time of such acquisition.

(d) Each Mortgagee shall, as a precondition to filing any Mortgage execute a Mortgagee Subordination and Recognition Agreement in substantially the form of Exhibit E hereto (it being understood that the Construction Mortgagee shall execute the form attached as Exhibit E-1 (the "Mortgagee Subordination and Recognition Agreement"). In no event shall any such Mortgage be valid or enforceable against Tenant's leasehold interest hereunder, and in no event shall any such Mortgagee be accorded the rights set forth herein (including this Section 10.10 and Section 10.01(e) and Section 10.11 hereof) unless and until such Mortgagee shall execute and deliver, at the time of making such Mortgage loan to Tenant, the Mortgagee Subordination and Recognition Agreement referenced to above. At Tenant's request, Landlord and a Mortgagee designated by Tenant shall enter into a Mortgagee Subordination and Recognition Agreement in substantially the form of Exhibit E hereto.

(e) Landlord hereby acknowledges that Tenant intends to enter into construction financing in conjunction with the Pro Victor Transaction, pursuant to which the Construction Mortgagee shall have a leasehold Mortgage on Tenant's interest in the Premises under this Lease until the Condominium Date, and thereafter the lien of the Construction Mortgage shall extend only to the Declarant's interest in the Residential Units and not to the Hotel Unit or the Public Amenity Unit. Provided the Construction Mortgagee enters into the Construction Mortgagee Subordination and Recognition Agreement in the form of Exhibit E-1 (the "Construction Mortgagee Subordination and Recognition Agreement") hereto at the time of the execution of the Construction Mortgage documents, such Construction Mortgage shall be deemed a "Mortgage" and the Construction Mortgagee shall be deemed a "Mortgagee" for purposes of this Lease (including this Section 10.10 and Section 10.11) until the Condominium Date, and thereafter such Construction Mortgagee shall not be deemed a "Mortgagee," for purposes of Section 10.11 but such Construction Mortgagee shall have all of the rights set forth in such Construction Mortgagee Subordination and Recognition Agreement and other applicable provisions of this Lease. At Tenant's request, Landlord and a Construction Mortgagee designated by Tenant shall enter into a Construction Mortgagee Subordination and Recognition Agreement in substantially the form of Exhibit E-1 hereto.

Section 10.11.

(a) In the case of termination of this Lease by reason of any Event of Default or in the event this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, Landlord shall give prompt notice thereof to each Mortgagee whose name and address Landlord has received pursuant to notice made in compliance with the

provisions of Section 10.10, at the address of such Mortgagee set forth in such notice, and otherwise in the manner provided by Article 25 hereof. Landlord, on written request of such Mortgagee made any time within thirty (30) days after the giving of such notice by Landlord, shall promptly execute and deliver a new lease of the Premises, or such portion thereof as is covered by the Mortgage, to the Mortgagee, or its designee or nominee, for the remainder of the Term upon all the covenants, conditions, limitations and agreements herein contained, provided that such Mortgagee (i) shall pay to Landlord, simultaneously with the delivery of such new lease, all unpaid Rental due under this Lease up to and including the date of the commencement of the term of such new lease and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Landlord in connection with the Default by Tenant, the termination of this Lease and the preparation of the new lease, and (ii) shall cure all Defaults existing under this Lease which are susceptible to being cured by such Mortgagee within a reasonable period of time after gaining possession of the Premises and otherwise on the terms applicable to Tenant pursuant to Section 24.01.

(b) Any such new lease and the leasehold estate thereby created shall, subject to the same conditions contained in this Lease, continue to maintain the same priority as this Lease with regard to any mortgage, including any fee mortgage, on the Premises or any part thereof or any other lien, charge or encumbrance thereon whether or not the same shall then be in existence. Concurrently with the execution and delivery of such new lease, Landlord shall assign to the tenant named therein all of its right, title and interest in and to moneys (including insurance and condemnation proceeds), if any, then held by or payable to Landlord or Depository which Tenant would have been entitled to receive but for termination of this Lease, and any sums then held by or payable to Depository shall be deemed to be held by or payable to it as Depository under the new lease.

(c) Upon the execution and delivery of a new lease under this Section 10.11, all Subleases which theretofore have been assigned to, or made by, Landlord shall be assigned and transferred, without recourse, by Landlord to the tenant named in such new lease. Between the date of termination of this Lease and the date of execution of the new lease, if a Mortgagee shall have requested such new lease as provided in Section 10.11(a), Landlord shall not cancel any Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) or enter into new Subleases without the consent of the Mortgagee.

(d) If there is more than one Mortgage, Landlord shall only recognize the Mortgagee whose Mortgage is senior in lien and which has requested a new lease of the Premises within the time period set forth in Section 10.11(a) as the Mortgagee entitled to the rights afforded by this Section 10.11, provided that either Tenant or such Mortgagee shall have given Landlord notice of such Mortgage in compliance with the provisions of Section 10.10(a).

Section 10.12. Landlord shall have the right to mortgage its leasehold interest in the Premises, as long as such mortgage is subject and subordinate to this Lease and any new lease executed pursuant to the provisions of Section 10.11. Anything in this Lease to the contrary notwithstanding, Landlord covenants and agrees that Tenant's interest in this Lease,

shall not be subordinate to any mortgage on Landlord's leasehold interest in the Premises or any mortgage by Landlord of its interest under the Hotel Unit Lease or the Hotel Unit Sublease except to the same extent that any such Tenant's interests are subordinate to Landlord's interests hereunder, or under the Hotel Unit Lease or the Hotel Unit Sublease. Any such Landlord's leasehold mortgagee shall, upon foreclosure under such mortgage, be entitled to succeed to all of the right, title and interest of Landlord under this Lease, the Hotel Unit Lease and the Hotel Unit Sublease and shall have the same priority as Landlord hereunder or under the Hotel Unit Lease or the Hotel Unit Sublease.

Section 10.13. Any management, operating or other similar agreement entered into by Tenant, any Unit Owner, any Subtenant and their respective successors and assignees, including, without limitation, the Hotel Operator Management Agreement and the Condominium Management Agreement shall be subject and subordinate in all respects to the terms and provisions of this Lease, the Master Lease, the Hotel Unit Lease, the Hotel Unit Sublease, the Title Matters, and any matters to which this Lease is subject, and the parties thereto shall agree pursuant to the terms of such agreement or such other agreement to attorn to Landlord, as Landlord hereunder or as Sublessor under the Hotel Unit Sublease, as applicable, and at the request of Landlord, any party to any such management, operating or other similar agreement shall execute and deliver a subordination and attornment agreement reasonably requested by Landlord confirming such subordination and agreement to attorn to Landlord upon the termination of this Lease or the Hotel Unit Sublease, as the case may be. At Tenant's request, Landlord and the Hotel Operator shall enter into a subordination non-disturbance recognition and attornment agreement in the form of Exhibit F annexed hereto with respect to the Hotel Operator Management Agreement (the "Hotel Operator Subordination Non-Disturbance Recognition Agreement"); provided, however with respect to the Ritz-Carlton only, the Hotel Operator Management Agreement Modification shall have occurred prior to the parties entering into the Hotel Operator Subordination Non-Disturbance Recognition Agreement. Tenant shall pay for Landlord's costs and expenses (including legal fees and expenses), if any, incurred in connection with the execution and review of such written agreement.

ARTICLE 11

CONSTRUCTION OF BUILDING

Section 11.01.(a) Tenant, using a Construction Manager, shall promptly commence (subject to Unavoidable Delays) on or before the Construction Commencement Date and (subject to Unavoidable Delays) construct the Building and effect Completion of the Building (including, completion of all work required to be performed by Tenant under the Public Amenity Space Agreement) in accordance with the Requirements, Master Development Plan, the Design Guidelines, the Construction Documents, and the applicable provisions of this Lease. Tenant shall, in accordance with sound construction practice, obtain from New York City and all other Governmental Authorities all permits, consents, certificates and approvals required to commence construction of the Building. At the request of Tenant, Landlord, at no cost or expense to it, shall within ten (10) days of Tenant's request, execute

and deliver any documents or instruments reasonably required to obtain such permits, consents, certificates and approvals, provided such documents or instruments do not impose any liability or obligation on Landlord. Subject to the provisions of Section 11.02(i), Tenant shall not undertake Commencement of Construction unless and until (i) Tenant shall have obtained as aforesaid, and delivered to Landlord copies of, all necessary permits, consents, certificates and approvals for such construction from all Governmental Authorities which are required to have been obtained prior to Commencement of Construction, (ii) Landlord shall have reviewed the Construction Documents in the manner provided herein and shall have determined that they conform to the Master Development Plan, the Design Guidelines, the Schematics and the Design Development Plans, (iii) Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals thereof, in accordance with Section 11.03(b), and (iv) either (A) a building loan Mortgage in an amount sufficient, in Landlord's judgment, to assure completion of construction of the Building shall have been made for the financing of such construction or (B) Landlord shall have approved a plan submitted by Tenant for financing the construction of the Building; provided, however, that until such construction financing has been consummated, Tenant shall not proceed past completion of driving of the piles necessary for the support of the Building. Tenant shall obtain such other permits, consents, certificates and approvals as may be required from time to time to continue and complete the construction of the Building. At the request of either Landlord or Tenant, made at any time after Commencement of Construction, Landlord and Tenant shall execute a certification setting forth the date of Commencement of Construction. In the event the parties shall be unable to agree on such date, such dispute shall be resolved by arbitration pursuant to Article 36. Notwithstanding the foregoing, prior to the date on which Tenant shall have consummated a construction loan for the financing of the completion of Building, Tenant shall have the right to proceed to pour concrete at or below ground level so long as, during the period commencing from the time Tenant initiates such construction activity until Tenant consummates such construction financing, Tenant shall, before such construction activity commences, increase the Design/Construction Period Fund by Five Million Dollars ($5,000,000) either, at Tenant's election, (x) in cash, or (y) increase the amount of the Design/Construction Period Letter of Credit by Five Million Dollars ($5,000,000) as set forth in Section 11.13, or (z) deliver to Landlord a supplemental Design/Construction Period Letter of Credit in the amount of Five Million Dollars ($5,000,000). The increased portion of the Design/Construction Period Fund shall no longer be required upon the closing of the building loan Mortgage described in Section 11.01(iv)(A), and upon the closing of such building loan Mortgage provided there is no Default, the increased Design/Construction Period Letter of Credit shall be decreased by Five Million Dollars ($5,000,000) or the supplemental Design/Construction Period Letter of Credit shall be terminated or cash in the amount of Five Million Dollars ($5,000,000) shall be refunded to the initially named Tenant hereunder, as applicable, it being understood and agreed that if any such Default shall have occurred and shall be continuing under this Lease on such date and Landlord has not elected to terminate this Lease or the Hotel Unit Sublease, as the case may be, in accordance with the provisions of Article 24 or otherwise or Tenant is not dispossessed by summary proceedings or otherwise as provided in Section 24.03(b), Landlord shall refund to the initially named Tenant hereunder all remaining proceeds, if any, in the Design/Construction Period Fund upon the curing of any such Default after applying all or a

portion of said proceeds to the payments of any sums then due or thereafter becoming due under this Lease as a result of such Default and to the payment of any damages or costs to Landlord resulting from such Default. Such increased Design/Construction Period Fund and increased or supplemental Design/Construction Period Letter(s) of Credit shall otherwise be on all of the terms set forth in Section 11.13 hereof.

(b) It is understood and agreed that from and after the Condominium Date, the Condominium Board, as Tenant under this Lease, shall not be responsible to effect Completion of the Building, and that such obligation and the obligation of Tenant under clauses (x) and (y) of Section 19.01(a) shall remain the obligation and liability of the Declarant and that such obligation with respect to the Hotel Unit, the Public Amenity Core and Shell and the Public Open Space as provided in the Hotel Unit Sublease shall also become the obligation of the Hotel Unit Sublessee under the Hotel Unit Sublease. From and after the Condominium Date, the reference in this Article 11 with regard to Completion of the Building and in Section 19.01(a) to "Tenant" shall be deemed to be a reference to Declarant.

Section 11.02.

(a) Except as indicated in that certain letter from Landlord to Tenant dated October 18, 1999 attached hereto as Exhibit G, Landlord hereby acknowledges that the schematic drawings (the "Schematics") conform to the Master Development Plan and the Design Guidelines.

(b) As soon as practicable, but in no event later than thirty (30) days after the Commencement Date (such date being subject to Unavoidable Delays), Tenant shall submit to Landlord for its review, design development plans and outline specifications for the Building (the "Design Development Plans"), prepared by the Architect and in accordance with Landlord's submission requirements for design development, such requirements being described in the Design Guidelines. Any changes in the Design Development Plans from the Schematics shall be identified in reasonable detail. Landlord's review of the Design Development Plans shall be limited to determining whether such plans conform to the Master Development Plan, the Design Guidelines and the Schematics. If Landlord determines that the Design Development Plans do so conform, Landlord shall notify Tenant to that effect. If Landlord determines that the Design Development Plans do not conform to the Master Development Plan, the Design Guidelines and the Schematics, Landlord shall so notify Tenant, specifying those respects in which the Design Development Plans do not so conform, and Tenant shall revise the same to so conform and shall resubmit the Design Development Plans to Landlord for review within fifteen (15) Business Days of the date of Tenant's receipt of notice from Landlord that the Design Development Plans do not so conform. Each initial review by Landlord shall be carried out within fifteen (15) Business Days of the date of initial submission of the Design Development Plans and each additional review by Landlord shall be carried out within ten (10) Business Days of the date of submission of any revised Design Development Plans, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) or ten (10) Business Day period, as the case may be, it shall be deemed to have determined that the Design

Development Plans or revised Design Development Plans, as the case may be, do conform to the Master Development Plan, the Design Guidelines and the Schematics).

(c) As soon as practicable, but in no event later than ninety (90) days after Landlord shall have notified Tenant that the Design Development Plans conform to the Master Development Plan, the Design Guidelines and the Schematics (such date being subject to Unavoidable Delays), Tenant shall submit to Landlord final contract plans and specifications for the Building including, the Public Open Space except for the Public Amenity Space (other than the Public Amenity Core and Shell), prepared by the Architect and in accordance with Landlord's requirements for final contract plans and specifications, such requirements being described in the Design Guidelines. Any changes in such final contract plans and specifications from the Design Development Plans shall be identified in reasonable detail. Landlord's review of the final contract plans and specifications shall be limited to determining whether such plans and specifications conform to the Master Development Plan, the Design Guidelines and the Design Development Plans. If Landlord determines that they do so conform, Landlord shall notify Tenant to that effect. If Landlord determines that the final contract plans and specifications do not conform to the Master Development Plan, the Design Guidelines and the Design Development Plans, Landlord shall so notify Tenant, specifying those respects in which the final contract plans and specifications do not so conform, and Tenant shall revise the same to so conform and shall resubmit the final contract plans and specifications to Landlord for review within fifteen (15) Business Days of the date of Tenant's receipt of notice from Landlord that the final contract plans and specifications do not so conform. Each initial review by Landlord shall be carried out within fifteen (15) Business Days of the date of initial submission of the final contract plans and specifications and each additional review by Landlord shall be carried out within ten (10) Business Days of the date of submission of any revised final contract plans and specifications, as the case may be, by Tenant (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) or ten (10) Business Day period, as the case may be, it shall be deemed to have determined that the final contract plans and specifications or the revised final contract plans and specifications, as the case may be, do conform to the Master Development Plan, the Design Guidelines and the Design Development Plans). The contract plans and specifications that have been determined (or are deemed) to conform to the Master Development Plan, the Design Guidelines and the Design Development Plans, as the same may be changed from time to time by Tenant, to the extent such changes are approved (or deemed approved) by Landlord as hereinafter provided, are hereinafter referred to as the "Construction Documents".

(d) In the event that Tenant shall desire to modify the Construction Documents with respect to, or which will in any way affect, any aspect of the exterior of the Building or a change in the height, bulk or setback of the Building or in any other manner which affects compliance with the Master Development Plan or the Design Guidelines, Tenant shall submit the proposed modifications to Landlord for approval prior to making or implementing any such modification. All modifications shall be identified in reasonable detail. Tenant shall not be required to submit to Landlord proposed modifications of the Construction Documents which affect solely the interior of the Building or which do not affect any aspect of the exterior of the Building or a change in the height, bulk or setback of the Building and do not affect compliance

with the Master Development Plan or the Design Guidelines. Landlord shall review the proposed changes to determine whether or not they (i) conform to the Master Development Plan or the Design Guidelines and (ii) in Landlord's judgment, reasonably exercised, provide for design, finishes and materials with respect to the exterior of the Building which are comparable in quality to those provided for in the Construction Documents. If Landlord determines that they do so conform and provide, Landlord shall notify Tenant to that effect. If Landlord determines that the Construction Documents, as so revised, do not conform to the Master Development Plan and the Design Guidelines or provide for design, finishes and materials which are not comparable in quality to those provided for in the Construction Documents, Landlord shall so notify Tenant, specifying those respects in which they do not so conform or provide, and Tenant shall revise the same to meet Landlord's objections and shall resubmit them to Landlord for review within fifteen (15) Business Days of the date of Tenant's receipt of notice from Landlord that they do not so conform or provide. Each initial review by Landlord shall be carried out within fifteen (15) Business Days of the date of initial submission of the Construction Documents, as so revised, by Tenant and each additional review by Landlord shall be carried out within ten (10) Business Days of the date of submission of any revisions thereto (and if Landlord shall not have notified Tenant of its determination within such fifteen (15) or ten (10) Business Day period, as the case may be, it shall be deemed to have determined that the proposed changes are satisfactory).

(e) Notwithstanding the provisions of Section 11.02(d), if, after the Commencement of Construction, Tenant makes a good faith determination that any proposed modification which requires Landlord's approval under Section 11.02(d) is of a minor or insubstantial nature, Tenant may so advise an employee designated by Landlord ("Landlord's Project Manager") (delivering to him or her a written statement setting forth the proposed modification and the basis for Tenant's determination and simultaneously delivering copies of said statement to Landlord's President, Chief Executive Officer, General Counsel and Director of Design). Landlord's Project Manager or Landlord shall, in writing, before the expiration of the fifth full Business Day after the receipt of said advice, either (i) notify Tenant of approval of said proposed modification or (ii) notify Tenant that Tenant is required to submit the proposed modification to Landlord as provided in Section 11.02(d). In the event Landlord's Project Manager or Landlord acts in accordance with (ii) above, Landlord, after receipt from Tenant of the proposed modification, shall endeavor to expedite its review thereof and notification to Tenant of its determination. Nothing set forth in this Section 11.02(e) shall require Landlord to notify Tenant of Landlord's determination earlier than the expiration of the fifteen (15) or ten (10) Business Day periods set forth in Section 11.02(d) with respect to such modification, provided, however, that if Landlord's Project Manager or Landlord shall not have notified Tenant of either (i) or (ii) above within the five (5) Business Day period set forth above, Landlord shall be deemed to have approved the proposed modification.

(f) In the event that there shall be a conflict between the express provisions of this Lease and any of the Construction Documents, the express provisions of this Lease shall govern subject to the terms of this Section 11.02(f). The Construction Documents shall comply with the Requirements, including but not limited to the Building Code of New York City. The responsibility to assure such compliance shall be Tenant's, it being understood and agreed that

Landlord's determination that the Construction Documents conform to the Master Development Plan and the Design Guidelines shall not be, nor shall it be construed to be or relied upon as, a determination that the Construction Documents comply with the Requirements. In the event that there shall be a conflict between the Requirements and the Master Development Plan or the Design Guidelines, the Requirements shall prevail. In the event that there shall be a conflict between the Construction Documents and the Master Development Plan or the Design Guidelines and no conflict exists with the Requirements, the Master Development Plan or the Design Guidelines shall prevail except that (i) if Tenant has given Landlord a detailed written description of such conflict, the areas where such conflict occurs and any additional information reasonably requested by Landlord documenting such conflict and (ii) if Landlord has given a written waiver of such conflict, then the Construction Documents shall prevail.

(g) All materials to be used on exterior of the Building not previously approved as part of Landlord's approval of Schematics or Design Development Plans shall be subject to the approval of the Landlord, in its sole discretion. In addition to the documents referred to in Section 11.01 and this Section 11.02, Tenant shall, at least thirty (30) Business Days prior to ordering the same for incorporation into the Building, submit to Landlord samples of all such materials to be used on the exterior of the Building, including windows, and the same shall be subject to Landlord's approval for conformity to the Design Guidelines, the Master Development Plan and the Construction Documents. If Landlord shall have failed to object to any of such materials within such fifteen (15) Business Day period after its receipt of such materials, it shall be deemed to have approved such materials. Landlord reserves the right to maintain its field personnel at the Premises to observe Tenant's construction methods and techniques (provided that such field personnel do not unreasonably interfere with Tenant's construction activities) and Landlord shall be entitled to have its field personnel or other designees attend Tenant's job and/or safety meetings. No such observation or attendance by Landlord's personnel or designees shall impose upon Landlord any responsibility for any failure by Tenant to observe applicable Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the Requirements and the provisions of this Lease.

(h) Subject to Section 11.02(f) and Articles 8, 9, 12, 13 and 14 hereof, Tenant shall not construct or permit to exist any Building on the Land unless the Building is in compliance with the Master Development Plan, the Requirements, including, but not limited to, the Building Code of New York City, the Construction Documents (subject to modification in accordance with this Lease) and Design Guidelines.

(i) Landlord acknowledges and agrees that in order to meet Tenant's construction schedule, Tenant may be required to "fast track" certain aspects of the final detailed plans and specifications and of the excavation and foundation stage of the construction process. Landlord agrees, without waiving or being deemed to have been waived, any of its rights hereunder and within the limitations of sound construction practice, to cooperate with Tenant, as reasonably requested from time to time by Tenant, in "fast tracking" the construction of the Building. Such cooperation may include, and may only include (i) shortening the review periods provided for herein, (ii) reviewing certain aspects of the Design Development Plans and

Construction Documents prior to completion and submission to Landlord of every aspect thereof and (iii) permitting Tenant to begin excavation and foundation work prior to completion and approval by Landlord of the Construction Documents.

Section 11.03.

(a) Commencing on the Commencement Date, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, until Commencement of Construction, insurance coverage of the types and in the minimum limits set forth in subsections (i) and (ii) of this Section 11.03(a). Prior to the Commencement of Construction, Tenant shall provide, or cause to be provided, and thereafter shall keep or cause to be kept in full force and effect, until Substantial Completion of the Building, the following:

(i) commercial general liability insurance, naming contractor or construction manager and Tenant as named insured and, as additional insureds, Landlord, Master Landlord and each Mortgagee under a standard mortgagee clause, such insurance to insure against liability for bodily injury and death and for property damage in such amount as may from time to time be reasonably required by Landlord (which shall be not less than Twenty-Five Million Dollars ($25,000,000)) combined single limit (inclusive of primary coverage and umbrella or excess policy coverage) nor more than such amount as, at the time in question, is customarily carried by prudent owners of like buildings and improvements, but, in no event, less than Twenty-Five Million Dollars ($25,000,000)), such insurance to include operations-premises liability, contractor's protective liability on the operations of all subcontractors, completed operations (to be kept in force for not less than three (3) years after Substantial Completion of the Building), broad form commercial liability (designating the indemnity provisions of the Construction Agreements and this Lease), a broad form comprehensive general liability endorsement providing blanket automatic contractual coverage including bodily injury to employees or others assumed by the insured under contract and, if the contractor is undertaking foundation, excavation or demolition work, an endorsement that such operations are covered and that the "XCU Exclusions" have been deleted;

(ii) commercial automobile liability insurance for all non-owned, leased, rented and/or hired vehicles insuring against liability for bodily injury and death and for property damage in an amount not less than Two Million Dollars ($2,000,000) combined single limit, with such coverage to be listed in the underlying schedule of any umbrella or following form excess policy for a total limit of Twenty-Five Million Dollars ($25,000,000), such insurance to name Tenant (contractor if carried by contractor) as named insured and, as additional insureds, Landlord, Master Landlord, any general contractor or construction manager engaged by Tenant (Tenant, if contractor carries such insurance) and each Mortgagee under a standard mortgage clause;

(iii) workers' compensation insurance providing statutory New York State benefits for all persons employed in connection with the construction at the Premises and employer's liability insurance in an amount not less than that required by New York State

law, with coverage to be listed in the underlying schedule of any umbrella or following form excess policy; and

(iv) commercial all-risk builder's risk insurance written on a one hundred percent (100%) of completed value (non-reporting) basis with limits as provided in Section 7.01(a)(i), naming, to the extent of their respective insurable interests in the Premises, Tenant as named insured, and, as additional insureds, Landlord, Master Landlord, any general contractor or construction manager engaged by Tenant and each Mortgagee under a standard mortgagee clause. In addition, such insurance (A) shall contain an acknowledgment by the insurance company that its rights of subrogation have been waived with respect to all of the insureds named in the policy and an endorsement stating that "permission is granted to complete and occupy", (B) if any storage location situated off the Premises is used, shall include coverage for the full insurable value, all materials and equipment on or about any such storage location intended for use with respect to the Premises, and (C) if materials, equipment, machinery or supplies to be used in connection with construction are shipped to the job site from places in the contiguous United States, the District of Columbia or Canada, the all-risk builders risk insurance will provide transit coverage.

In the event the proceeds received pursuant to the insurance coverage required under Section 11.03(a)(iv) hereof shall exceed Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)), such proceeds shall be paid to Depository and disbursed in accordance with the provisions of Sections 8.02 and 8.03 hereof. In the event such proceeds shall be Two Hundred Fifty Thousand Dollars ($250,000) (as such amount shall be increased as provided in Section 7.02(a)) or less, such proceeds shall be payable, in trust, to Tenant for application to the cost of completion of construction of the Building.

(b) No construction shall be commenced until Tenant shall have delivered to Landlord the original policies of insurance or duplicate originals or certificates thereof together with copies of such insurance policies, as required by this Section 11.03.

(c) To the extent applicable, Tenant shall comply with the provisions of Section 7.02 hereof with respect to the policies required by this Section 11.03, including the delivery to Landlord of proof of payment of all premiums and the obtaining of the agreement of each such insurer that such policy shall not be cancelled or modified without at least thirty (30) days prior written notice to Landlord and each Mortgagee

(d) To the extent that the insurance coverages required pursuant to this Section 11.03 duplicate those required by Article 7 hereof, Tenant shall not be required to maintain such coverages in duplicate, but in each instance the more extensive coverage shall be maintained.

Section 11.04. Construction of the Building shall be (a) commenced on or prior to the Construction Commencement Date and prosecuted by Tenant with all reasonable diligence and without interruption, in each case, however, subject to Unavoidable Delays, and (b) Substantially Completed with respect to the Hotel Portion and Substantially Completed with

respect to the Public Amenity Core and Shell by Tenant in a good and workmanlike manner in accordance with the approved Construction Documents (subject to modification in accordance with the terms of this Lease), the Master Development Plan, the Design Guidelines and all Requirements, no later than thirty (30) months after the Construction Commencement Date, as such date may be extended by Unavoidable Delays and (c) Substantially Completed with respect to the Residential Portion by Tenant in a good and workmanlike manner in accordance with the approved Construction Documents (subject to modification in accordance with this Lease), the Master Development Plan, the Design Guidelines and all Requirements, no later than thirty (30) months after the Construction Commencement Date, as such date may be extended by Unavoidable Delays (the date of Substantial Completion of the Hotel Portion, the Substantial Completion of the Public Amenity Core and Shell and the Substantial Completion of the Residential Portion, if any, shall be referred to herein as the "Scheduled Completion Date"). Upon Substantial Completion of the Hotel Portion, Tenant shall furnish Landlord with (i) true copies of the temporary Certificates(s) of Occupancy for the Hotel Portion, (ii) promptly after substantial completion a complete set of "as built" plans for the Hotel Portion prepared by the Architect and accompanied by a written statement by the Architect that the "as-built" plans are complete and correct, and (iii) a survey satisfactory to Landlord in its sole discretion prepared and sealed by a registered surveyor showing the Building and all easements and other matters of record relating to the Premises, certified by such surveyor to Tenant, Landlord, Master Landlord, each Mortgagee, and to any title company which shall have insured or committed to insure the Premises, and bearing the certification of such surveyor that the Building is within the property lines of the Land and does not encroach upon any easement or violate any restriction of record. Upon Substantial Completion of the Public Amenity Space Core and Shell, Tenant shall furnish Landlord promptly after substantial completion with a complete set of "as built" plans for the Public Amenity Space prepared by the Architect and accompanied by a written statement by the Architect that the "as-built" plans are complete and correct. Upon Substantial Completion of the Residential Portion, Tenant shall furnish Landlord with (i) true copies of the temporary Certificate(s) of Occupancy for the Residential Portion, (ii) promptly after substantial completion a complete set of "as built" plans for the Residential Portion prepared by the Architect and accompanied by a written statement by the Architect that the "as built" plans are complete and correct, and (iii) if not previously delivered to Landlord in accordance with this Section 11.04, a survey satisfactory to Landlord in its sole discretion prepared and sealed by a registered surveyor showing the Building and all easements and other matters of record relating to the Premises, certified by such surveyor to Tenant, Landlord, Master Landlord, each Mortgagee, and to any title company which shall have insured or committed to insure the Premises, and bearing the certification of such surveyor that the Building is within the property lines of the Land and does not encroach upon any easement or violate any restriction of record. "Substantial Completion of the Hotel Portion" or with respect to the Hotel Portion, "Substantially Completed" shall mean (i) substantial completion of all construction work on the Hotel Portion and the installation of all FF&E in the Hotel required for the operation of the Hotel, (ii) the delivery to Landlord of true copies of the temporary Certificate(s) of Occupancy for the Hotel Portion, and (iii) the delivery to Landlord of a statement in writing from the Architect that the construction of the Hotel Portion has been completed substantially in accordance with the terms of this Lease, the approved Construction Documents subject to modification in accordance with this Lease, the Master Development Plan, the Design Guidelines and all Requirements. "Substantial Completion of the

Public Amenity Core and Shell" or with respect to the Public Amenity Core and Shell, "Substantially Completed" shall mean (i) completion of the Public Amenity Core and Shell except for (x) minor or insubstantial details of construction or mechanical adjustment or installation and (y) construction which in accordance with good construction practices should not be completed until after the performance of interior partitions or other fit out work to be performed by the Public Amenity Entity, and (ii) the delivery to Landlord of a statement in writing from the Architect that the construction of the Public Amenity Core and Shell has been completed substantially in accordance with this Lease, the approved Construction Documents (subject to modification in accordance with this Lease), the Master Development Plan, the Design Guidelines and all Requirements. "Substantial Completion of the Residential Portion" or with respect to the Residential Portion, "Substantially Completed" shall mean (i) substantial completion of all construction work on the Residential Portion and the installation of all furnishings, fixtures and Equipment in the Residential Portion in accordance with the approved Construction Documents, subject to modification in accordance with this Lease, (ii) the delivery to Landlord of true copies of the temporary Certificate(s) of Occupancy for the Residential Portion, and (iii) the delivery to Landlord of a statement in writing from the Architect that the construction of the Residential Portion has been completed substantially in accordance with this Lease, the approved Construction Documents subject to modification in accordance with this Lease, the Master Development Plan, the Design Guidelines and all Requirements. Notwithstanding anything herein contained to the contrary, if Tenant shall have failed to deliver the temporary Certificate(s) of Occupancy for the Hotel Portion and temporary Certificate(s) of Occupancy for the Residential Portion, on or before the Scheduled Completion Date as a result of the failure of the Department of Buildings of New York City, or successor body of similar function, to issue the same, such failure shall not constitute a Default hereunder provided the Architect certifies in writing to Landlord that Tenant has completed all work necessary to obtain such temporary Certificate(s) of Occupancy for the Hotel Portion and temporary Certificates(s) of Occupancy for the Residential Portion. In such event, Tenant shall deliver a true copy of the temporary Certificate(s) of Occupancy for the Hotel Portion, and temporary Certificate(s) of Occupancy for the Residential Portion to Landlord promptly upon their issuance. Promptly after the same has been duly issued, Tenant shall furnish Landlord with permanent Certificates of Occupancy for all of the Hotel Portion, the Public Amenity Space and the Residential Portion duly issued by the New York City Department of Buildings. Tenant shall, or shall cause, any temporary Certificate(s) of Occupancy to be extended until a permanent Certificate(s) of Occupancy is issued and shall promptly after the same has been duly extended furnish Landlord with true copies of such Certificate(s).

Section 11.05.

(a) The materials to be incorporated in the Building (other than materials owned by utility companies) at any time during the Term shall, upon purchase of same and at all times thereafter, constitute the property of Landlord, and upon construction of the Building or the incorporation of such materials therein, title thereto shall vest in Landlord, provided, however, that (i) Landlord shall not be liable in any manner for payment or otherwise to any contractor, subcontractor, laborer or supplier of materials or other Person in connection with the purchase of any such materials, (ii) Landlord shall have no obligation to pay any compensation to Tenant by

reason of its acquisition of title to such materials and the Building, (iii) Landlord shall have no obligation with respect to the storage or care of such materials or the Building and (iv) all materials to be incorporated in the Building shall, immediately upon the purchase of same, be deemed to be leased to Tenant pursuant to this Lease.

(b) All Construction Agreements shall include the following provision: "[contractor] [subcontractor] [materialman] hereby agrees that immediately upon the purchase by [contractor] [subcontractor] [materialman] of any building materials to be incorporated in the Building (as said term is defined in the Lease pursuant to which the owner acquired a leasehold interest in the property), or of any building materials to be incorporated in improvements made thereto, such materials shall become the sole property of Battery Park City Authority, a public benefit corporation, notwithstanding that such materials have not been incorporated in, or made a part of, such Building at the time of such purchase; provided, however, that Battery Park City Authority shall not be liable in any manner for payment or otherwise to [contractor] [subcontractor] [materialman] in connection with the purchase of any such materials and Battery Park City Authority shall have no obligation to pay any compensation to [contractor] [subcontractor] [materialman] by reason of such materials becoming the sole property of Battery Park City Authority."

(c) Tenant acknowledges that by reason of the ownership of the Building by Landlord, certain sales and compensating use taxes will not be incurred in connection with the construction of the Building. Tenant shall pay to Landlord, as payments in lieu of such sales and compensating use taxes, Three Million Thirty Three Thousand Nine Hundred Forty Four Dollars ($3,033,944), payable in eight (8) equal quarterly payments, each in the amount of Three Hundred Seventy Nine Thousand Two Hundred Forty Three Dollars ($379,243), the first such payment to be made on the Commencement Date and the succeeding payments to be made on the first day of each third month thereafter until paid in full. In the event Tenant is compelled by any Governmental Authority to pay any sales or compensating use tax in respect of materials incorporated (or to be incorporated) in the Building and as to which Tenant previously has made to Landlord payments in lieu of such taxes, Tenant shall receive a credit against the next installment(s) of Base Rent in an amount equal to the amount of such taxes (including interest and penalties) which Tenant has been compelled to pay, provided that (i) each Construction Agreement contains the provision set forth in Section 11.05(b), (ii) Tenant has notified Landlord prior to payment of such taxes and promptly upon receipt of notice of claim that a claim has been made therefor, (iii) if permitted by applicable law, Landlord has the opportunity to contest the imposition of same provided that neither Tenant's interest in the Premises nor any income derived by Tenant therefrom would, by reason of such contest, be forfeited or lost, or subject to any lien, encumbrance or charge, and Tenant would not by reason thereof be subject to any civil or criminal liability, and (iv) in no event shall the credit allowed to Tenant hereunder exceed the amount of monies paid to Landlord in lieu of such taxes pursuant to this Section 11.05(c). Landlord at the sole cost and expense of Tenant shall reasonably cooperate with Tenant to obtain an exemption of sales and compensatory use taxes imposed by any Governmental Authority.

Section 11.06. Tenant may furnish and install a project sign, designed, of a size and with such text as shall be reasonably satisfactory to Landlord, at a location on the exterior of

the Premises reasonably satisfactory to Landlord and Tenant. Tenant also shall extend to Landlord and any of its designee(s) the privilege of being featured participants in ground-breaking and opening ceremonies to be held at such time and in such manner as Landlord and Tenant shall agree.

Section 11.07. Tenant shall remove from the Project Area all fill excavated from the Land and shall dispose of such fill in accordance with all applicable Requirements.

Section 11.08. Tenant acknowledges that it is aware that construction activities of other developers and of Landlord are in progress or contemplated within the Project Area. Tenant shall coordinate its construction activities at the Premises with other construction activities taking place in the Project Area, and those incident to the construction of Landlord's Civic Facilities and civic facilities in other portions of the Project Area in accordance with good construction practice. Landlord acknowledges and agrees that any delays in Tenant's construction of the Building attributable to other construction activity in the Project Area may constitute an Unavoidable Delay, provided Tenant shall have complied with Tenant's obligations under this Article 11 but, in no event, shall Landlord or Master Landlord be liable for any such delays in Tenant's construction of the Building attributable to other construction activity in the Project Area, if any. In addition, Tenant shall (i) cause any and all work which Tenant is required to or does perform on, under or adjacent to any portion of any street situated in whole or in part in the Project Area to be performed in accordance with a Storage and Staging Letter and all applicable Requirements and in a manner which does not wrongfully obstruct or hinder ingress to or egress from any portion of the Project Area, (ii) not cause, permit or suffer the storage of construction materials or the placement of vehicles not then being operated in connection with construction activities on any portion of any such street, except as may be permitted by applicable Requirements and the Storage and Staging Letter, (iii) undertake its construction activities in accordance with normal New York City construction rules and (iv) promptly repair or, if required by Landlord, replace any portion of Landlord's Civic Facilities damaged by the act or omission of Tenant or any agent, contractor or employee of Tenant, any such repair or replacement, as the case may be, to be performed (A) by using materials identical to those used by Landlord, or, if Tenant, despite its best efforts, is unable to procure such materials, using materials in quality and appearance similar to those used by Landlord and reasonably approved by Landlord, and (B) in accordance with the drawings and specifications used to construct such Landlord Civic Facilities. In the event Tenant shall have failed to promptly repair or replace such portion of Landlord's Civic Facilities as hereinabove provided within thirty (30) days after receipt of written notice of any such failure (subject to Unavoidable Delays), Landlord shall have the right to do so at Tenant's expense and Tenant shall, within ten (10) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord. In the event Tenant shall fail to promptly comply with the provisions of subparagraph (ii) of this Section 11.08 within thirty (30) days after receipt of written notice of any such failure (subject to Unavoidable Delays), Landlord shall have the right after notice to Tenant to remove such construction materials or vehicles at Tenant's expense and Tenant shall, within ten (10) days after demand, reimburse Landlord for such costs and expenses incurred by Landlord. At the request of Landlord, Tenant shall promptly enclose the Land with an 8-foot high chain-mesh fence or such other mutually agreeable fence so as to separate the Premises from the remainder of

the Project Area. During construction, Tenant shall maintain Tenant's fence in good condition. Upon Substantial Completion of the Building, Tenant shall remove Tenant's fence and, if constructed, Landlord shall remove its fence from around the Premises. Subject to applicable Requirements, Tenant shall have the right to remove Tenant's fence at an earlier date.

Section 11.09. Tenant shall use reasonable efforts to cause its contractors and all other workers at the Premises connected with Tenant's construction to work harmoniously with each other, and with the other contractors and workers in the Project Area, and Tenant shall not engage in, permit or suffer, any conduct which may disrupt such harmonious relationship. Landlord shall use reasonable efforts to cause its contractors and workers in the Project Area to work harmoniously with Tenant's contractors and workers. Tenant shall use its reasonable efforts to cause its contractors to minimize any interference with the use, occupancy and enjoyment of the Project Area by other occupants thereof.

Section 11.10. Tenant shall construct the Building in a manner which does not unreasonably interfere with, delay or impede the activities of Landlord, its contractors, and other contractors and developers within the Project Area. If, in Landlord's reasonable judgment, Tenant shall fail to comply with its obligations under this Section 11.10, Landlord may, in addition to any other remedies it may have hereunder, order Tenant (and Tenant's contractors and other Persons connected with Tenant's construction within the Project Area) to cease those activities which Landlord believes unreasonably interfere with, delay or impede Landlord or such other contractors or developers. No delay or other loss or hindrance of Tenant arising from any such order by Landlord or from the actions or omissions of any other such contractor or developer shall form the basis for any claim by Tenant against Landlord or excuse Tenant from the full and timely performance of its obligations under this Lease except as otherwise expressly set forth in this Lease.

Section 11.11. All persons employed by Tenant with respect to construction of the Building shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum hourly rate required by law.

Section 11.12. Landlord hereby agrees to insert in all leases entered into by Landlord for any part of the Project Area prior to the Substantial Completion of the Building provisions substantially similar to Section 11.08, 11.09 and 11.10.

Section 11.13. Tenant shall, at all times until Completion of the Building, secure its obligations under this Lease, including, without limitation, Tenant's obligation for the payment of Rental, by either, at Tenant's election, (x) depositing with Landlord upon the execution of this Lease a clean irrevocable letter of credit (the "Design/Construction Period Letter of Credit") drawn in favor of Landlord, in the form attached hereto as Exhibit H and having a term of not less than one (1) year, payable in United States dollars upon presentation of sight draft, issued by and drawn on a recognized commercial bank or trust company which is a member of the New York Clearing House Association and which otherwise complies with the provisions of Article 42 or which is satisfactory to Landlord, in an initial amount of Five Million Seven Hundred Eighteen Thousand Seven Hundred Ninety Dollars ($5,718,790) as such amount

may be required to be increased pursuant to Section 11.01 or (y) delivering to Landlord cash in an initial amount of Five Million Seven Hundred Eighteen Thousand Seven Hundred Ninety Dollars ($5,718,790) as such amount may be required to be increased pursuant to Section 11.01 (such Design/Construction Period Letter of Credit and/or cash or combination thereof referred to herein collectively as the "Design/Construction Period Fund"). Except as otherwise provided herein, the Design/Construction Period Letter of Credit shall be renewed or replaced without decrease in amount each and every year as provided herein. Each Replacement Letter of Credit shall be delivered to Landlord not less than thirty (30) days prior to the expiration of the Design/Construction Period Letter of Credit or then current Replacement Letter of Credit. The failure of Tenant to renew the Design/Construction Period Letter of Credit or any Replacement Letter of Credit in accordance with this Section 11.13 and Article 42 hereof shall entitle Landlord to present the Design/Construction Period Letter of Credit or Replacement Letter of Credit for payment, in which event Landlord shall hold and apply the proceeds thereof (together with any interest earned thereon) as provided in Section 11.14.

Section 11.14. If prior to Completion of the Building an Event of Default shall occur, whether or not this Lease is thereby terminated, Landlord is hereby authorized by Tenant to (i) retain the cash proceeds of the Design/Construction Period Fund for its own account and/or (ii) present the Design/Construction Period Letter of Credit, including, without limitation, any increased or supplemental Design/Construction Period Letter of Credit or any Replacement Letter of Credit for payment. In the event this Lease or from and after the Condominium Date, the Hotel Unit Sublease, as the case may be, is terminated in accordance with the provisions of Article 24 or otherwise or Tenant is dispossessed by summary proceedings or otherwise as provided in Section 24.03(b), in addition to the other damages provided for in Section 24.04, Landlord is hereby authorized by Tenant to retain all of the proceeds of the Design/Construction Period Fund, including the proceeds of such Design/Construction Period Letter of Credit, including, without limitation, any increased supplement Design/Construction Period Letter of Credit or Replacement Letter of Credit, as applicable, as liquidated damages (it being agreed that it would be impracticable or extremely difficult to fix the actual damages) to compensate Landlord for the additional damages (beyond those described in Section 24.04) that Landlord is likely to suffer if this Lease is terminated or Tenant is dispossessed prior to the Completion of the Building. In the event that this Lease is not terminated or after the Condominium Date the Hotel Unit Sublease, as the case may be, or Tenant is not dispossessed, Landlord is hereby authorized by Tenant to apply all or a portion of said proceeds to the payment of any sums then due or thereafter becoming due under this Lease and to the payment of any damages or costs to Landlord resulting from such Event of Default and to retain the balance thereof pending further application or payment to Tenant as hereinafter provided, and Tenant shall within thirty (30) days thereafter take such action as is necessary to restore the cash balance of the Design/Construction Period Fund, or, if applicable, the face amount of the Design/Construction Period Letter of Credit or Replacement Letter of Credit, as the case may be, so that at all times prior to the Completion of the Building the Design/Construction Period Fund shall be valued at the amount set forth in Section 11.13 as such amount may be required to be increased pursuant to Section 11.01. Unless theretofore applied by Landlord, Landlord shall deliver to the initially named Tenant hereunder the Design/Construction Period Fund or the Design/Construction Period Letter of Credit or any Replacement Letter of Credit or proceeds thereof on the date of

Completion of the Building provided no Default shall have occurred and be continuing hereunder it being understood and agreed that if any such Default shall have occurred and shall be continuing under this Lease on the date of the Completion of the Building and Landlord has not elected to terminate this Lease or the Hotel Unit Sublease, as the case may be, in accordance with the provisions of Article 24 or otherwise or Tenant is not dispossessed by summary proceedings or otherwise as provided in Section 24.03(b), Landlord shall refund to the initially named Tenant hereunder all remaining proceeds, if any, in the Design/Construction Period Fund upon the curing of any such Default after applying all or a portion of said proceeds to the payments of any sums then due or thereafter becoming due under this Lease as a result of such Default and to the payment of any damages or costs to Landlord resulting from such Default).

ARTICLE 12

REPAIRS

Section 12.01. Unless Landlord shall be obligated to maintain and repair any of the foregoing in accordance with the provisions of Article 26, Tenant shall, at its sole cost and expense, put and keep, or shall cause to be put and kept, in good condition and repair the Premises, including, without limitation, the Building, roofs, foundations and appurtenances thereto, all sidewalks adjacent to the Premises, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), sidewalk hoists, water, sewer and gas connections, pipes and mains which are located on or service the Premises (unless the City of New York or a public utility company is obligated to maintain or repair same) shall put, keep and maintain the Building in good and safe order and condition, and make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary or appropriate to keep the same in good and safe order and condition, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, provided, however, that Tenant's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 8 and 9 hereof. Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises. When used in this Section 12.01, the term "repairs" shall include all necessary replacements, alterations and additions. All repairs made by Tenant shall be at least equal in quality and class to the original work and shall be made in compliance with (a) all Requirements (including, but not limited to, Local Law No. 5, 1973, as amended, and Local Law 58, 1988, as amended), (b) the requirements of the New York Board of Fire Underwriters or any successor thereto, and (c) the Building Code of New York City, as then in force.

Section 12.02. Except as otherwise specifically provided in Article 26, Tenant, at its sole cost and expense, shall, or shall cause, keep or cause to be kept clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances, the sidewalks adjacent to the Premises, grounds, chutes and sidewalk hoists comprising, in front of, or adjacent to, the Premises.

Section 12.03. Except as otherwise specifically provided in Article 26, Landlord shall not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall Landlord have any duty or obligation to make any alteration, change, improvement,

replacement, Restoration or repair to, nor to demolish, the Building. Tenant assumes the full and sole responsibility for the condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises. Tenant shall not clean nor require, permit, suffer nor allow any window in the Building to be cleaned from the outside in violation of Section 202 of the Labor Law or of the rules of the state, county or municipal department board or body having jurisdiction.

ARTICLE 13

CHANGES, ALTERATIONS AND ADDITIONS

Section 13.01. From and after Substantial Completion of the Building, Tenant shall not demolish, replace or materially alter the Building, or any part thereof (except as provided to the contrary with respect to Equipment in Article 15), or make any addition thereto, whether voluntarily or in connection with repairs required by this Lease (collectively, "Capital Improvement"), unless Tenant shall comply with the following requirements and, if applicable, with the additional requirements set forth in Section 13.02:

(a) No Capital Improvement shall be undertaken until Tenant shall have procured from all Governmental Authorities and paid for all permits, consents, certificates and approvals for the proposed Capital Improvement which are required to be obtained prior to the commencement of the proposed Capital Improvement (collectively, "Improvement Approvals"). Landlord shall join or otherwise cooperate in the application for any such Improvement Approvals, provided such application is made without cost, expense or liability (contingent or otherwise) to Landlord. True copies of all such Improvement Approvals shall be delivered by Tenant to Landlord prior to commencement of the proposed Capital Improvement.

(b) All Capital Improvements, when completed, shall be of such a character as not to materially reduce the value of the Premises below its value immediately before construction of such Capital Improvement.

(c) All Capital Improvements shall be made with reasonable diligence and continuity (subject to Unavoidable Delays) and in a good and workmanlike manner and in compliance with (i) all Improvement Approvals, (ii) the Master Development Plan, the Design Guidelines, and, if required pursuant to Section 13.02(a) or (b), the plans and specifications for such Capital Improvement as approved by Landlord, (iii) the orders, rules, regulations and requirements of any Board of Fire Underwriters or any similar body having jurisdiction, and (iv) all other Requirements.

(d) No construction of any Capital Improvements shall be commenced until Tenant shall have delivered to Landlord original insurance policies, or certificates of insurance with respect to such policies together with copies of such policies, issued by responsible insurers authorized to do business in the State of New York as are reasonably acceptable to Landlord, bearing notations evidencing the payment of premiums or installments thereof then due or accompanied by other evidence satisfactory to Landlord of such payments, for the insurance required by Section 11.03, unless Landlord shall reasonably determine that the Capital

Improvement does not warrant the insurance required by Section 11.03 in which case Landlord shall in its discretion specify such lesser types and levels of insurance appropriate to such Capital Improvement. If, under the provisions of any casualty, liability or other insurance policy or policies then covering the Premises or any part thereof, any consent to such Capital Improvement by the insurance company or companies issuing such policy or policies shall be required to continue and keep such policy or policies in full force and effect, Tenant, prior to the commencement of construction of such Capital Improvement, shall obtain such consents and pay any additional premiums or charges therefor that may be imposed by said insurance company or companies.

Section 13.02.

(a) If the estimated cost of any proposed Capital Improvement shall exceed Five Hundred Thousand Dollars ($500,000) (as such amount shall be increased as provided in Section 7.02(a)), either individually or in the aggregate with other Capital Improvements which are a related portion of a program or project of Capital Improvements constructed in any twelve (12) month period during the Term, Tenant shall:

(i) pay to Landlord, within ten (10) days after demand, the reasonable fees and expenses of any architect or engineer selected by Landlord to review the plans and specifications describing the proposed Capital Improvement and inspect the work on behalf of Landlord; and

(ii) furnish to Landlord the following:

(w) at least forty-five (45) Business Days prior to commencement of the proposed Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or a registered architect approved by Landlord, which approval shall not be unreasonably withheld (except that if any element of the proposed Capital Improvement relates to matters covered by the Design Guidelines, the plans and specifications for such elements shall be prepared by the Architect or an architect which is able to demonstrate an overall body of work recognized by the architecture community as showing excellence of design of hotel/residential projects of the type contemplated by the Building) and, at the request of Landlord, any other drawings, information or samples to which Landlord is entitled under Article 11, all of the foregoing to be subject to Landlord's review and approval for the sole purpose of determining conformity with the Master Development Plan, the Design Guidelines and, in the event such Capital Improvement is commenced within ten (10) years from the date the Building shall have been Substantially Completed, the Construction Documents;

(x) at least ten (10) Business Days prior to commencement of the proposed Capital Improvement, (1) a contract or construction management agreement reasonably satisfactory to Landlord in form assignable to

Landlord (subject to any prior assignment to any Mortgagee), made with a reputable and responsible contractor or construction manager reasonably approved by Landlord, providing for the completion of the Capital Improvement in accordance with the schedule included in the plans and specifications, free and clear of all liens, encumbrances, security agreements, interests and financing statements, and (2) payment and performance bonds or other security, in each case satisfying the requirements of Section 8.04(a)(ii) hereof; and

(y) at least ten (10) Business Days prior to commencement of the proposed Capital Improvement, an assignment to Landlord (subject to any prior assignment to any Mortgagee) of the contract so furnished and the bonds or other security provided thereunder, such assignment to be duly executed and acknowledged by Tenant and by its terms to be effective only upon any termination of this Lease or upon Landlord's re-entry upon the Premises or following any Event of Default prior to the complete performance of such contract, such assignment also to include the benefit of all payments made on account of such contract, including payments made prior to the effective date of such assignment.

(b) Notwithstanding that the cost of any Capital Improvement is less than Five Hundred Thousand Dollars ($500,000) (as such amount shall be increased as provided in Section 7.02(a)), such cost to be determined as provided in Section 8.02(b), to the extent that any portion of the Capital Improvement involves work which affects the structural elements of the Building or work involving the exterior of the Building or a change in the height, bulk or setback of the Building from the height, bulk or setback existing immediately prior to the Capital Improvement or in any other manner affects compliance with the Master Development Plan, or the Design Guidelines, then Tenant shall furnish to Landlord at least thirty (30) Business Days prior to commencement of the Capital Improvement, complete plans and specifications for the Capital Improvement, prepared by a licensed professional engineer or registered architect approved by Landlord, which approval shall not be unreasonably withheld (except that if any element of the proposed Capital Improvement relates to matters covered by the Design Guidelines, the plans and specifications for such elements shall be prepared by the Architect or an architect which is able to demonstrate an overall body of work recognized by the architecture community as showing excellence of design of hotel/residential projects of the type contemplated by the Building), or a registered Architect, and, at Landlord's request, such other items designated in Section 13.02(a)(ii)(w) hereof, all of the foregoing to be subject to Landlord's review and approval as provided therein. In addition, Tenant shall pay to Landlord the reasonable fees and expenses of any independent architect or engineer selected by Landlord to review the plans and specifications describing the proposed Capital Improvement and inspect the work on behalf of Landlord.

(c) Landlord shall notify Tenant of Landlord's determination with respect to any request for approval required under this Section 13.02 within fifteen (15) Business Days of the later of (i) Landlord's receipt of such request from Tenant or (ii) Landlord's receipt of the

plans and specifications and the drawings, information or samples which Landlord shall have requested in accordance with Section 13.02(a)(ii)(w). Landlord's failure to so notify Tenant within said time period shall be deemed to constitute approval of the proposed Capital Improvement by Landlord.

(d) In the event that Tenant shall desire to modify the plans and specifications which Landlord theretofore has approved pursuant to Section 13.02(a)(ii)(w) or 13.02(b) with respect to, or which will in any way affect, any aspect of the exterior of the Building or the height, bulk or setback thereof or which will affect compliance with the Design Guidelines, or the Master Development Plan, Tenant shall submit the proposed modifications to Landlord. Tenant shall not be required to submit to Landlord proposed modifications of the plans and specifications which affect solely the interior of the Building provided such proposed interior modifications do not affect compliance with the Design Guidelines or the Master Development Plan or which do not affect any aspect of the exterior of the Building or the height, bulk or setback thereof and which do not affect compliance with the Design Guidelines or the Master Development Plan. Landlord shall review the proposed changes for the sole purposes of determining whether or not they (i) conform to the Master Development Plan and the Design Guidelines and (ii) in Landlord's judgment, reasonably exercised, provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications and shall approve such proposed changes if they do so conform and so provide. If Landlord determines that the proposed changes are not satisfactory in light of the above criteria, it shall so advise Tenant, specifying in what respect the plans and specifications, as so modified, do not conform to the Master Development Plan, the Design Guidelines or do not provide for design, finishes and materials which are comparable in quality to those provided for in the approved plans and specifications. Within fifteen (15) Business Days after Landlord shall have so advised Tenant, Tenant shall revise the plans and specifications so as to meet Landlord's objections and shall deliver same to Landlord for review. Each initial review by Landlord shall be carried out within fifteen (15) Business Days of the date of initial delivery of the plans and specifications, as so revised (or one or more portions thereof), by Tenant and such additional review by Landlord shall be carried out within ten (10) Business Days of the date of delivery of any revisions thereto, and if Landlord shall not have notified Tenant of its determination within such periods, it shall be deemed to have determined that the proposed changes are satisfactory. Landlord shall not review portions of the approved plans and specifications which Landlord has previously determined to be satisfactory, provided same have not been changed by Tenant.

Section 13.03. All Capital Improvements shall be carried out under the supervision of an architect selected by Tenant and approved by Landlord or the architect which prepared the plan and specification of the same. Promptly after completion of any Capital Improvement, Tenant shall furnish to Landlord a complete set of "as-built" plans for such Capital Improvement and, where applicable, a survey meeting the requirements of Section 11.04 hereof, together with, once same is issued, a permanent Certificate of Occupancy therefor issued by the New York City Department of Building, to the extent a modification thereof was required.

Section 13.04. Title to all additions, alterations, improvements and replacements made to the Building, including, without limitation, the Capital Improvements, shall forthwith

vest in Landlord as provided in Section 11.05, without any obligation by Landlord to pay any compensation therefor to Tenant.

ARTICLE 14

REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE UNDERWRITERS AND POLICIES; COMPLIANCE WITH MASTER LEASE

Section 14.01. Except as otherwise specifically provided in Article 26 and subject to Section 14.02, Tenant promptly shall comply with any and all applicable present and future laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders, including, without limitation, Environmental Statutes (collectively, "Requirements") without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, of all Governmental Authorities now existing or hereafter created, and of any and all of their departments and bureaus, of any applicable Fire Rating Bureau or other body exercising similar functions, affecting the Premises or any street, avenue or sidewalk comprising a part or in front thereof or any vault in or under the same, or requiring the removal of any encroachment, or affecting the construction, maintenance, use, operation, management or occupancy of the Premises, whether or not the same involve or require any structural changes or additions in or to the Premises, without regard to whether or not such changes or additions are required on account of any particular use to which the Premises, or any part thereof, may be put, and without regard to the fact that Tenant is not the fee owner of the Premises. Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease. Tenant shall have no obligation to comply with Requirements with respect to, or pay for or complete, Landlord's Civic Facilities to be performed by Landlord as provided in Article 26.

Section 14.02. Tenant shall have the right to contest the validity of any Requirements or the application thereof. During such contest, compliance with any such contested Requirements may be deferred by Tenant upon condition that, if Tenant is not an Institutional Lender, and if the cost of compliance shall exceed Two Hundred Fifty Thousand Dollars ($250,000) (subject to increase as provided in Section 7.02(a)), then, prior to instituting such proceeding, Tenant shall furnish to Landlord a bond, cash or other security satisfactory to Landlord, in an amount equal to the amount by which the cost of such compliance exceeds Two Hundred Fifty Thousand Dollars ($250,000) (subject to increase as provided in Section 7.02(a)), securing compliance with the contested Requirements and payment of all interest, penalties, fines, fees and expenses in connection therewith. Any such proceeding instituted by Tenant shall be commenced as soon as is reasonably possible after the issuance of any such contested matters, or after actual notice to Tenant of the applicability of such matters to the Premises, and shall be prosecuted to final adjudication with reasonable dispatch. Landlord at the sole cost and expense of Tenant shall execute documents required to be executed by the owner of the Land in connection with such contests, provided that such cooperation is not against public policy, and provided, further, such cooperation is not adverse to the interest of Landlord as determined by

Landlord. Notwithstanding the foregoing, Tenant promptly shall comply with any such Requirements, and compliance shall not be deferred if such non-compliance shall result in the imminent loss or forfeiture of the Premises, or any part thereof, or if Landlord shall be in danger of being subject to civil or criminal liability or penalty by reason of non-compliance therewith.

Section 14.03. Tenant shall not cause or create or permit to exist or occur any condition or event relating to the Premises which would, with or without notice or passage of time, result in an event of default under the Master Lease (as the same exists on the date hereof). Tenant shall perform all of Landlord's obligations as tenant under the Master Lease (as the same exists on the date hereof) relating to the maintenance and operation of the Premises unless, in accordance with the terms of this Lease, Landlord is specifically obligated to perform any such obligation. Landlord contemporaneously herewith is delivering to Tenant a certificate in the form of Exhibit I annexed hereto.

ARTICLE 15

EQUIPMENT

Section 15.01. All Equipment shall be and shall remain the property of Landlord. Tenant shall not have the right, power or authority to, and shall not, remove any Equipment from the Premises without the consent of Landlord, which consent shall not be unreasonably withheld, provided, however, such consent shall not be required in connection with repairs, cleaning or other servicing, or if (subject to Unavoidable Delays) the same is promptly replaced by Equipment which are at least equal in utility and value to the Equipment being removed. Notwithstanding the foregoing, Tenant shall not be required to replace any Equipment which performed a function which has become obsolete or otherwise is no longer necessary or desirable in connection with the use or operation of the Premises, or any part thereof, unless such failure to replace would reduce the value of the Premises or would result in a reduced level of maintenance of the Premises, in which case Tenant shall be required to install such Equipment as may be necessary to prevent such reduction in the value of the Premises or in the level of maintenance.

Section 15.02. Tenant shall keep all Equipment in good order and repair and subject to Section 15.01 shall replace the same when necessary with items at least equal in utility and value to the Equipment being replaced.

Section 15.03. Tenant shall establish and maintain, or shall cause the Hotel Operator to establish and maintain pursuant to the Hotel Operator Management Agreement (provided, however, that Tenant shall remain fully responsible for the failure by the Hotel Operator to so establish and maintain), with respect to the Hotel Portion a reserve account for the FF&E (the "FF&E Reserve") in amounts (a) equal to that currently set forth in Exhibit D or (b) comparable to FF&E reserve accounts maintained for hotels of a size and quality similar to the Hotel if the Hotel is no longer a Ritz Carlton hotel.

ARTICLE 16

DISCHARGE OF LIENS; BONDS

Section 16.01. Subject to the provisions of Section 16.02 hereof, except as otherwise expressly provided herein, Tenant shall not create or permit to be created any lien, encumbrance or charge upon the Premises or any part thereof, or the Project Area or any part thereof, the income therefrom or any assets of, or funds appropriated to, Landlord, and Tenant shall not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired. Tenant may finance (and enter into equipment finance leases of) any Equipment.

Section 16.02. If any mechanic's, laborer's or materialman's lien (other than a lien arising out of any work performed by or on behalf of Landlord) at any time shall be filed in violation of the obligations of Tenant pursuant to Section 16.01 against the Premises or any part thereof or the Project Area or any part thereof, or, if any public improvement lien created or permitted to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant, within forty-five (45) days after receipt of notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith including, without limitation, reasonable attorneys' fees and disbursements, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord's making of the payment or incurring of the costs and expenses, shall constitute Rental and shall be paid by Tenant to Landlord within ten (10) days after demand. Notwithstanding the foregoing provisions of this Section 16.02, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Landlord in an amount sufficient to pay such lien with interest and penalties.

Section 16.03. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of materials that would give rise to the filing of any lien against Landlord's interest in the Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all Construction Agreements to provide, that Landlord shall not be

liable for any work performed or to be performed at the Premises for Tenant, any Subtenant and, if applicable, any Unit Owner or for any materials furnished or to be furnished at the Premises for any of the foregoing, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Premises or any part thereof, the Project Area or any part thereof, or any assets of, or funds appropriated to, Landlord.

Section 16.04. Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the estate or assets of, or funds appropriated to, Landlord or of any interest of Landlord in the Premises.

ARTICLE 17

REPRESENTATIONS; POSSESSION

Section 17.01. Tenant acknowledges that Tenant is fully familiar with the Land, the Project Area, the physical condition thereof (including, without limitation, the fact that the Land includes substantial portions of landfill which may present special difficulties in the design, construction and maintenance of the Building and Tenant's Civic Facilities), the Title Matters, the Master Lease, the Master Development Plan, the Memorandum of Understanding, the Settlement Agreement and the Design Guidelines. Except for Landlord's Civic Facilities to be constructed by Landlord as provided in Article 26, Tenant accepts the Land in its existing condition and state of repair, and, except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Land, the Project Area, the status of title thereof, the physical condition thereof, including, without limitation, the landfill portions thereof, the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, or the use that may be made of the Land, that Tenant has relied on no such representations, statements or warranties, and that Landlord shall in no event whatsoever be liable for any latent or patent defects in the Land.

Section 17.02. Notwithstanding anything herein contained to the contrary, Landlord represents that the Master Lease, the Design Guidelines, the Master Development Plan, the Memorandum of Understanding, and the Settlement Agreement have not been amended, modified or supplemented, except as specifically set forth in the definitions contained in Article 1 and are in full force and effect.

Section 17.03. Landlord shall deliver possession of the Land on the Commencement Date vacant and free of occupants and tenancies, subject to the Title Matters.

Section 17.04. Tenant represents that on the Commencement Date it is a single-purpose New York limited liability company whose sole member is MEP or an entity wholly-owned by MEP. MEP's sole general partner is MEA, whose sole general partners are CMJ and PEA. Tenant has delivered to Landlord true and accurate copy of the partnership or other organizational documents of MEP, MEA and Tenant.

ARTICLE 18

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 18.01. Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of the Building (including, but not limited to, any of the common areas within the Building, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets or sidewalk area within the Premises or which may arise from any other cause whatsoever except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord, its officers, agents, employees or licensees; nor shall Landlord in any event be liable for the acts or failure to act of any other tenant of any premises within the Project Area or of any agent, representative, employee, contractor or servant of such other tenant.

Section 18.02. Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work, except to the extent any of the foregoing shall have resulted from the negligence or wrongful act of Landlord, its officers, agents, employees or licensees.

Section 18.03. In addition to the provisions of Sections 18.01 and 18.02, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the Project Area, it being agreed that Tenant shall assume and bear all risk of loss with respect thereto.

ARTICLE 19

INDEMNIFICATION OF LANDLORD AND OTHERS

Section 19.01. Tenant shall not do, or knowingly permit any Subtenant, Unit Owner, sublessee of a Unit, Hotel Operator or any employee, agent, servant or contractor of Tenant or of any Subtenant, sublessee of a Unit, or Hotel Operator to do, any act or thing upon the Premises or elsewhere in the Project Area which may reasonably be likely to subject Landlord to any liability or responsibility for injury or damage to persons or property, or to any liability by reason of any violation of law or any other Requirement, and shall use its best efforts

to exercise such control over the Premises so as to fully protect Landlord against any such liability. Tenant, to the fullest extent permitted by law, shall indemnify and save Landlord, any former Landlord, the State of New York, and their agents, directors, officers and employees (collectively, the "Indemnitees"), harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term, except to the extent that the same shall have been caused in whole or in part by the negligence or wrongful act of any of the Indemnitees or by the negligence or wrongful act of Landlord in its capacity as the lessee or owner of the Public Amenity Space under Section 23.06(b)(iv) hereof:

(a) (x) construction of the Hotel Portion and the Public Amenity Core and Shell, (y) construction of the Residential Portion, and (z) any other work or thing done in or on the Premises or any part thereof, including, without limitation, any Restoration;

(b) any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part of the Premises or adjacent thereto, provided such indemnity with regard to streets, alleys, sidewalks, curbs, vaults, passageways and other space is limited to an alteration, repair, condition, or maintenance of any street, alley, sidewalk, curb, vault, passageway or other space done or performed by Tenant or any agent, contractor, servant or employee of Tenant or which Tenant is obligated to do or perform;

(c) any negligent or tortious act or failure to act within the Project Area on the part of Tenant or any agent, contractor, servant or employee of Tenant;

(d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof or in, or about any sidewalk or vault, unless such sidewalk or vault is solely within the control of Landlord or a utility company;

(e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;

(f) any lien or claim which may have arisen out of any act of Tenant or any agent, contractor, servant or employee of Tenant against or on the Premises or any other portion of the Project Area, or any lien or claim created or permitted to be created by Tenant in respect of the Premises against any assets of, or funds appropriated to any of the Indemnitees under the laws of the State of New York or of any other Governmental Authority or any liability which may be asserted against any of the Indemnitees with respect thereto;

(g) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements or Subleases, on Tenant's part to be kept, observed or performed;

(h) any contest by Tenant permitted pursuant to the provisions of this Lease, including, without limitation, Articles 4, 14 and 28 hereof; or

(i) any action taken by any Person pursuant to any Environmental Statute or under common law, pertaining to hazardous or toxic waste or other substances, or in any manner arising out of or related to the presence, use, generation, storage, disposal or transport of any hazardous materials or environmental contaminants found in, on or under, affixed to or emanating from the Premises, except to the extent such hazardous materials or environmental contaminants were present at the Premises on the date hereof.

Section 19.02. The obligations of Tenant under this Article 19 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

Section 19.03. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 19.01, then, after written notice of the same, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier and approved by Landlord, which approval shall not be unreasonably withheld (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and Landlord shall approve, which approval shall not be unreasonably withheld. In such event, Tenant shall control all decisions in respect of the litigation and settlement of such claims. Notwithstanding the foregoing, Landlord may engage its own attorneys to assist in its defense and shall have the right to participate in the litigation and settlement of such claims. Provided such claim, action or proceeding is not covered by insurance maintained by Tenant and the attorneys engaged by Landlord are experienced in matters of the type in question, Tenant shall pay the reasonable fees and disbursements of such attorneys. The indemnification obligations imposed upon Tenant under Section 19.01 shall not apply to any settlement agreed to by Landlord without Tenant's consent which consent shall not be unreasonably withheld nor if Landlord retains its own attorneys and such retention will materially impair or materially diminish Tenant's insurance coverage and Landlord has been so advised in writing by Tenant's insurer.

Section 19.04. The provisions of this Article 19 shall survive the Expiration Date with respect to actions or the failure to take any actions or any other matter arising prior to the Expiration Date.

ARTICLE 20

RIGHT OF INSPECTION, ETC.

Section 20.01. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice (except in cases of emergency) for the purpose of (a) inspecting the same, (b) determining whether or not Tenant is in compliance with its obligations hereunder, (c) constructing, maintaining and inspecting any

Civic Facilities and (d) making any necessary repairs to the Premises and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work, provided that, except in any emergency, Landlord shall have given Tenant notice specifying such repairs or work and Tenant shall have failed to make such repairs or to do such work within thirty (30) days after the receipt of such notice (subject to Unavoidable Delays), or if such repairs or such work cannot reasonably be completed during such thirty (30) day period, to have commenced and be diligently pursuing the same (subject to Unavoidable Delays).

Section 20.02. Nothing in this Article 20 or elsewhere in this Lease shall imply any duty upon the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord, during the progress of any such work, may keep and store at the Premises all necessary materials, tools, supplies and equipment. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage of Tenant, any Subtenant or other occupant of the Building by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof, provided Landlord shall use reasonable efforts to minimize damage and interference with the conduct of business in the Building resulting from Landlord's exercise of its rights under this Article 20, and the obligations of Tenant under this Lease shall not be affected thereby. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Unavoidable Delays, and in such a manner as not to unreasonably interfere with the conduct of business in or use of such space.

ARTICLE 21

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 21.01. If Tenant at any time shall be in Default, after notice thereof and after applicable grace periods, if any, provided under this Lease for Tenant or a Mortgagee, respectively, to cure or commence to cure same, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf.

Section 21.02. All reasonable sums paid by Landlord and all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in connection with its performance of any obligation pursuant to Section 21.01, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord as additional Rental hereunder within ten (10) days after Landlord shall have submitted to Tenant a statement, in reasonable detail, substantiating the amount demanded by Landlord. Any payment or performance by Landlord pursuant to Section 21.01 shall not be nor be deemed to be a waiver or release of breach or Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings or take such other action as may be

permissible hereunder or otherwise provided at law or in equity if an Event of Default by Tenant shall have occurred.

ARTICLE 22

NO ABATEMENT OF RENTAL

Except as may be otherwise expressly provided herein, there shall be no abatement, off-set, diminution or reduction of Rental payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY

Section 23.01. (a)(i) Subject to the Requirements and this Lease, the Premises shall be used and operated as and for the uses described in the following clauses (x), (y) and (z), all such uses and operation in accordance with and as permitted under this Lease, the Certificate or Certificates of Occupancy for the Premises, the Requirements, the Master Development Plan, and the Design Guidelines and for no other use or purpose, and, commencing on the date of the Completion of the Building, but subject to the Requirements and the terms and provisions of this Lease, including, without limitation, Sections 23.01(a)(ii)-(iv) and Section 23.06 hereof, Tenant shall use and operate the Premises continuously and without interruption throughout the entire Term (x) with respect to the Hotel Portion, for Hotel purposes including, without limitation, the ancillary purposes and uses thereto set forth in Section 23.01(b) and Section 23.05(b), (y) with respect to the Residential Portion, for residential purposes, and (z) with respect to the Public Amenity Space, Tenant shall use good faith efforts to cause the Public Amenity Space to be used and operated continuously and without interruption throughout the entire Term for its intended purposes as described in Section 23.06 hereof. Such efforts shall include expeditiously replacing the Hotel Operator, if the Hotel Operator Management Agreement shall be terminated.

(ii) Tenant may close all or a portion of the Hotel for up to 120 days in connection with the replacement of the Hotel Operator following any Default hereunder caused by such Hotel Operator or any termination of the Hotel Operator Management Agreement resulting from a default of Hotel Operator thereunder.

(iii) Notwithstanding the foregoing or any other provisions of this Lease to the contrary, Tenant or Hotel Operator may close all or a portion of the Hotel to perform alterations, repairs and refurbishments of same, provided that (a) Tenant or Hotel Operator procures and delivers to Landlord a certificate from the Architect or other qualified, independent professional whereby the Architect or such professional sets forth its professional opinion as to the amount of time it would reasonably take to complete such alterations, repairs or refurbishment of the Premises, (b) Tenant commences such alterations, repairs or refurbishment reasonably promptly following the delivery of such certificate to Landlord (but not before such delivery), or the approval of any such repairs, alterations or refurbishment by Landlord if and to the extent required under this Lease, if later, (c) Tenant diligently prosecutes such repairs, alterations or

refurbishment to completion, (d) such temporary closings are (1) in accordance with Prudent Management Standards or (2) are being effected because of a transition from one Hotel Operator to another Hotel Operator and (e) in no event shall such cessation exceed thirty (30) days during any Lease Year (subject to extension due to Unavoidable Delays) provided, however, that Tenant may close all or substantially all the Hotel for a period not exceeding one hundred twenty (120) days in any Lease Year (subject to extension due to Unavoidable Delays) not more than once in any ten (10) year period. For purposes hereof, the term "Prudent Management Standards" shall mean the management standards that would be adhered to by a hotel operator in determining whether, and for how long, to keep open or to close any portion(s) of the Hotel, assuming that such operator adheres to customary management standards for hotels comparable in size, quality type, amenities and age of the Hotel in determining whether, and for how long, to keep open or to close any portion(s) of the Hotel; and such operator's objective in temporarily closing and refurbishing portions of the Hotel is to maximize profits from the operation of the Hotel, taking into consideration the size, quality, type, amenities and age of the Hotel.

(iv) In addition, notwithstanding the foregoing, portions of the Public Amenity Space may be closed during fit-outs (whether by Tenant or by Subtenants of Tenant) of such areas (e.g., prior to opening or following a re-leasing of the Public Amenity Space or following the bankruptcy of a Subtenant of the Public Amenity Space), or in the ordinary course of any renovations or alterations performed by (or on behalf of) any Subtenant of the Public Amenity Space, provided that (a) Tenant procures and delivers to Landlord a certificate from the Architect or other qualified, independent professional whereby the Architect or such professional sets forth its professional opinion as to the amount of time it would reasonably take to complete the fit-out or alterations, (b) Tenant (or the Subtenant of Tenant) commences such alterations or refurbishment reasonably promptly following the delivery of such certificate to Landlord (but not before such delivery), (c) Tenant (or the Subtenant of Tenant) diligently prosecutes such alterations or refurbishment to completion, and in no event shall each such cessation exceed thirty (30) days during any Lease Year (as such time period may be extended for reasons of force majeure or by reason of Unavoidable Delays); provided, however, that Tenant may close all or substantially all of the Public Amenity Space for a period not exceeding one hundred twenty (120) days in any Lease Year (subject to extension due to Unavoidable Delays) not more than once in any ten (10) year period.

(b) In addition, without limiting the generality of the foregoing, the following restrictions and requirements and covenants and conditions shall apply to the Building and the Premises:

(i) The ground floor uses of the Building shall include a restaurant space, a residential lobby, a hotel lobby, a registration area for the Hotel and the portion of the Public Amenity Space required to be located on the ground floor as set forth in the Design Guidelines. The ground floor may also include retail space. The ground floor Hotel lobby shall be approximately four thousand (4,000) square feet, and shall be continuous between the eastern and southern entrances of the Building.

(ii) The first tower floor above the street wall portion of the Building along Battery Place shall include a first class to luxury or deluxe restaurant having a liquor license.

(iii) The ground floor restaurant and the restaurant on the first tower floor shall be open to the public and access to the facilities contained therein shall be comparable to that provided for guests of the Hotel, provided, however, that discounting for guests of the Hotel shall be permitted.

(iv) No portion of the Building shall be used for office space (other than as an accessory to permitted Hotel and residential uses) without the written consent of the Landlord, which consent may be withheld in its sole discretion.

(v) The Hotel, the area south of the build-to-line along the south side of the Building (the "Public Open Space"), the 15 foot wide sidewalk easement area along the eastern boundary of the Premises (the "Sidewalk Easement") and all other sidewalks and open spaces on the Premises are subject to the requirements set forth in the Design Guidelines. The designs of the Public Open Space, the improvements in the Sidewalk Easement and all other sidewalks and open spaces on the Premises are subject to Landlord's approval.

(vi) The maximum zoning floor area of the Building shall not exceed twelve times the square footage of the Land. The Hotel shall have a minimum approximate zoning floor area of two hundred thousand (200,000) square feet for hotel rooms and shall contain at least ten thousand (10,000) square feet for pre-function, conference, meeting and ballroom spaces. The Residential Portion of the Building shall not exceed two hundred seventy thousand (270,000) square feet of zoning floor area space. Tenant shall take all actions required to be taken to provide that at least eighty (80%) percent of the aggregate Hotel area used for rooms is offered to the public on a transient day-to-day basis based on daily rates with no long-term discounting offered either directly or indirectly (i.e.: rates based on a stay of one month or longer).

(vii) All development rights to zoning floor area and accessory parking spaces for the Residential Portion not used for the initial construction of the Building are retained by Landlord and Tenant shall cooperate with Landlord, or at the direction of Landlord, with the tenant of any other site in the Project Area, in obtaining the approval of any Governmental Authority, if required, with respect to the transfer of such rights to Landlord, provided that, with respect to such accessory parking spaces the tenant under the ground lease with Landlord for the receiving parcel(s) agrees that such transferred accessory spaces shall not be rented for a period longer than one month, and that monthly rental agreements for such transferred accessory spaces be made available first to residents of the Residential Portion on the same terms on which spaces are rented on the receiving site.

Section 23.02. Tenant shall not use or occupy, nor permit or suffer the Premises or any part thereof to be used or occupied for any unlawful, illegal or extra hazardous business, use

or purpose, or in such manner as to constitute a nuisance of any kind (public or private) or that Landlord, in its reasonable judgment, deems offensive by reason of odors, fumes, dust, smoke, noise or other pollution, or for any purpose or in any way in violation of the Certificates of Occupancy or of any governmental laws, ordinances, requirements, orders, directions, rules or regulations, including, without limitation, the Design Guidelines, or which may make void or voidable any insurance then in force on the Premises or, without Landlord's consent, for any use which requires a variance, waiver or special permit under the Zoning Resolution of New York City as then in effect. Tenant shall take, immediately upon the discovery of any such unpermitted, unlawful, illegal or extra hazardous use, all necessary actions, legal and equitable, to compel the discontinuance of such use. If for any reason Tenant shall fail to take such actions, and such failure shall continue for thirty (30) days after Tenant's receipt of notice from Landlord specifying such failure, Landlord is hereby irrevocably authorized (but not obligated) to take all such actions in Tenant's name and on Tenant's behalf, Tenant hereby irrevocably appointing Landlord as Tenant's attorney-in-fact coupled with an interest for all such purposes. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord acting pursuant to the immediately preceding sentence (including, but not limited to, reasonable attorneys' fees and disbursements), together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost, expense or charge until the date of receipt of repayment by Landlord, shall be paid by Tenant to Landlord within ten (10) days after demand and shall constitute Rental under this Lease.

Section 23.03. Tenant shall not knowingly suffer or permit the Premises or any portion thereof to be used by the public in such manner as might reasonably tend to impair title to the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises or any portion thereof.

Section 23.04. Tenant shall take all such actions as Landlord is required to take in connection with the use and occupancy of the Premises under the terms of the Master Lease, as the same exists on the date hereof, and Tenant shall not (to the extent reasonably within Tenant's control) permit any action or condition in respect of the Premises which constitutes or would, with notice or lapse of time or both, constitute an event of default under the Master Lease (as the same exists on the date hereof). Landlord shall perform all obligations of tenant under the Master Lease other than those which are the obligation of Tenant under this Lease, and Landlord shall not take or fail to take any action which constitutes or would, with notice or lapse of time or both, constitute an event of default under the Master Lease.

Section 23.05.

(a) Tenant shall cause the Hotel to be operated by the Hotel Operator only as a hotel with the highest rating by a nationally recognized hotel rating service (e.g., Mobil or Triple A) taking into account the age of the Hotel assuming a first class repair and restoration program under a hotel brand, flag or franchise approved at the sole discretion of Landlord. Notwithstanding the foregoing, the Ritz-Carlton rating, hotel brand, flag and franchise is approved for as long as the quality of standards set forth in the Hotel Operator Management

Agreement attached as Exhibit D are maintained (including any Exhibits thereto referred to therein). In addition, for as long as compliance with the rating requirement in the first sentence of this Section 23.05(a) is maintained, any other nationally recognized brand, flag or franchise that is equal to or better in quality of service and furnishings than those standards set forth in the Hotel Operator Management Agreement attached as Exhibit D is approved. Tenant shall not make any modifications to the quality standards contained in the Hotel Operator Management Agreement (including the one attached as Exhibit D hereto) without the prior written consent of Landlord. In addition, in no event shall Ritz-Carlton change any of the quality standards contained in or referred to in the Hotel Operator Management Agreement attached as Exhibit D hereto, including the "Ritz-Carlton Standards" (as such term is defined or used in such Hotel Operator Management Agreement) unless any such change applies uniformly to all urban Ritz-Carlton hotels owned, managed or licensed by Ritz-Carlton in the United States that have 200 or more hotel rooms.

(b) Subject to Section 23.01(a), Tenant shall, at all times from and after Completion of the Building, cause the Hotel to be operated by the Hotel Operator pursuant to the Hotel Operator Management Agreement and in accordance with Section II of the Design Guidelines.

Section 23.06. (a)(i) Landlord and Tenant agree that the inclusion of a certain public amenity space in the Building (the "Public Amenity Space") is an important element to the construction and operation of the Building and Tenant's tenancy hereunder. The Public Amenity Space shall comprise not less than five thousand (5,000) square feet in the aggregate on the ground floor of the Building and shall be designed and constructed by Tenant as more particularly described and indicated in the Design Guidelines. The parties acknowledge that the initial Tenant hereunder has been the primary participant in the selection of Skyscraper Museum, the initial intended occupant of the Public Amenity Space. The parties further acknowledge that it is in the best interest of the parties for Tenant to have an active involvement in the selection of a successor occupant of the Public Amenity Space if such selection were to become necessary.

(ii) The Public Amenity Entity shall, at its sole cost and expense, construct the Public Amenity Space (other than the Public Amenity Core and Shell) in accordance with the Design Guidelines. Tenant shall, at its sole cost and expense, construct, the Public Amenity Core and Shell in accordance with the Design Guidelines and the terms hereof. Landlord agrees and acknowledges that Tenant shall have the right to perform any work in the Public Amenity Space which may be necessary to obtain a permanent Certificate of Occupancy for the Building. In addition, Landlord agrees and acknowledges that if the Public Amenity Entity shall fail to perform any work in the Public Amenity Space beyond the construction of the Public Amenity Core and Shell which may be necessary to obtain a permanent Certificate of Occupancy for the Building, then, Tenant or Declarant shall have the right, but not the obligation, to perform any such work and any amounts paid or advanced by Tenant in connection with the performance of such work shall be due and payable by the Public Amenity Entity to Tenant on demand after submission of a statement, in reasonable detail, substantiating the amounts paid or advanced by Tenant. All such work shall be performed in accordance with the terms and provisions of this

Lease, and Declarant or Tenant, as the case may be shall indemnify Landlord in respect thereof as set forth in Section 19.01(a)(x) and (z), and shall procure insurance as provided in this Lease.

(b)(i) Subject to Section 23.06(c) hereof, Tenant shall use good faith efforts to enter into an agreement for the use and the operation of the Public Amenity Space as a publicly oriented amenity (generically, a "Public Amenity Space Agreement") with the Skyscraper Museum or, if the Skyscraper Museum does not elect to operate such space, with a not-for-profit or other entity providing another museum, cultural facility or publicly oriented amenity approved by Landlord. The Skyscraper Museum and such other entity approved by Landlord operating a museum, cultural facility or publicly oriented amenity are hereinafter referred to individually and collectively as a "Public Amenity Entity." In connection with the foregoing, at any time during which the Public Amenity Space is not being operated by a Public Amenity Entity as a publicly oriented amenity, but subject to Section 23.06(c) hereof, Tenant shall promptly deliver to Landlord a monthly status report of Tenant's efforts to cause the Public Amenity Space to be operated by a Public Amenity Entity as a publicly oriented amenity.

(ii) The Public Amenity Space shall be made available to the Public Amenity Entity (or to Landlord) on a rent-free basis for so long as the Public Amenity Space is being operated as a publicly oriented amenity, provided Tenant may charge a pro rata share of maintenance, operating and repair expenses for common areas (and General Common Elements after the Condominium Date), Building systems and a pro rata share of insurance expenses and Impositions allocable to the Public Amenity Space and following the Public Amenity Tax Assessment Date, the PILOT attributable to the Public Amenity Unit, if any. The Public Amenity Space Agreement shall be in form and substance satisfactory to the Landlord in its sole reasonable discretion and, at Landlord's election, may be in the form of a lease or a Sublease or other form of transfer agreement designated by Landlord and reasonably satisfactory to Tenant. The Public Amenity Space Agreement with a Public Amenity Entity shall include a provision, inter alia, for the termination of the use and occupancy, or for the reversion of title to the Public Amenity Unit, if applicable, if the Public Amenity Space shall cease to be used by the Public Amenity Entity in accordance with the provisions hereof or if the Completion of the Public Amenity Space does not occur within forty-eight (48) months from the Construction Commencement Date.

(iii) Notwithstanding anything to the contrary contained in this Lease, Landlord agrees and acknowledges that if and to the extent any act or omission of a Public Amenity Entity shall constitute a violation of any of the terms or provisions of this Lease ("Public Amenity Space Violation") any such Public Amenity Space Violation shall not constitute a Default by Tenant under this Lease provided that Tenant is using commercially reasonable efforts to enforce the terms and provisions of this Lease which are applicable to the Public Amenity Space and such Public Amenity Entity other than any enforcement against Landlord.

(iv) If within (x) six (6) months from the Commencement Date, or (y) twelve (12) months after the date on which Tenant is aware or should have been aware that the occupant of the Public Amenity Space no longer qualifies as a Public Amenity Entity or is otherwise

unable or is likely to become unable to continue construction of its interior space or continue operating the Public Amenity Space for its intended purpose, as applicable, Tenant has been unable to enter into a Public Amenity Space Agreement with a Public Amenity Entity for the operation of a publicly oriented amenity within the Public Amenity Space, then, Tenant shall give written notice thereof to Landlord (the "Public Notice"). Upon receipt of the Public Notice, Landlord shall then have the right and option to (1) locate a Public Amenity Entity reasonably acceptable to Tenant or (2) enter into a Public Amenity Space Agreement with Tenant, pursuant to which Landlord (or any affiliate of Landlord) would assume the role of the Public Amenity Entity (provided that Landlord shall be limited to use of the Public Amenity Space for the purposes contemplated herein and for public arts, recreational or community facility programming serving the residents of the Battery Park City community and shall not use such space for parks maintenance purposes) for the balance of the Term, or pursuant to which Landlord would seek to sublease or transfer the Public Amenity Space to a Public Amenity Entity. Landlord shall have a period of 120 days from the receipt of the Public Notice to elect the option set forth in clauses (1) and (2) above. If such option is not exercised within such 120 day period, such option shall be deemed waived by Landlord and the provisions of Section 23.06(d) hereof shall apply. If Landlord shall elect either such option, but Landlord shall fail to locate a Public Amenity Entity and/or enter into a Public Amenity Space Agreement with a Public Amenity Entity within two hundred seventy-five (275) days from Landlord's election of such option or Landlord shall fail within such time to use (or cause an affiliate to use) the Public Amenity Space for the purposes set forth herein, then, the provisions of Section 23.06(d) below shall apply.

(c) If at any time Landlord either owns the Public Amenity Unit, or Landlord has entered into a Public Amenity Space Agreement with Tenant (or the owner of the Public Amenity Unit) as provided herein, notwithstanding any other provisions hereof to the contrary, the following provisions shall apply:

(i) Landlord, at no cost or expense to Tenant, shall have the right to make and authorize any and all changes, alterations, installations and improvements in such space as Landlord may deem necessary, at Landlord's cost and expense, subject to Tenant's right of approval of any such alteration affecting the exterior portions of the Building, affecting the structure of the Building, affecting any Building system or affecting any area of the Building outside of the Public Amenity Space (which approval shall not be unreasonably withheld);

(ii) Landlord shall accept the Public Amenity Space in its then "as is" condition except that nothing contained in this Section 23.06 shall diminish Tenant's obligation to Substantially Complete the Public Amenity Core and Shell; and

(iii) performance by Landlord shall be deemed performance by Tenant of any similar obligation under this Lease and any default by Landlord under any of the terms hereof shall not give rise to a Default by Tenant under this

Lease, nor shall Tenant be liable for any default under this Lease or deemed to be in Default hereunder if such default arises directly from any act or omission of Landlord or its sublessee or any act or omission of any occupant holding under or pursuant to any Public Amenity Space Agreement or other agreement with Landlord.

(d) If Landlord shall not have elected to exercise either of its options under Section 23.06(b)(iv) or Landlord shall be deemed to have waived such options or if Landlord shall have elected to exercise either or both of such options but Landlord shall have failed to locate a Public Amenity Entity and/or enter into a Public Amenity Space Agreement with a Public Amenity Entity pursuant to Section 23.06(b)(iv), or shall have failed to take the Public Amenity Space for its or its affiliates' purposes as provided herein, then subject to the provisions of Section 26.06(e), the Public Amenity Space will become part of the Hotel Portion and may be used and occupied for a use other than as a publicly oriented amenity with respect to retail uses or uses which are integrated within the operation of the Hotel Portion or for facilities for the residents of the Residential Portion. Landlord agrees and acknowledges that the events described in this paragraph shall not constitute a Default under this Lease.

(e) Notwithstanding anything to the contrary contained in this Section 23.06, in the event that the Public Amenity Space shall become part of the Hotel Portion as provided in Section 23.06(d) (the date of such reversion or subsequent reversions, being hereinafter referred to as a "Public Amenity Space Use Conversion Date"), then, for so long as Tenant shall directly use and occupy the entire Public Amenity Space for a purpose other than the operation of a publicly oriented amenity, the amount of Hotel Base Rent, Hotel PILOT and the Civic Facilities Payment allocable to the Hotel Portion shall be increased proportionately by the aggregate square footage of the Public Amenity Space. At least 18 months prior to the end of each fifteen (15) year period following the Public Amenity Space Use Conversion Date, Landlord shall be offered again the option described in Section 23.06(b)(iv) under the same terms and conditions as provided therein, and Landlord shall have the right to exercise such option within six months after receipt of such notice. If Landlord fails to exercise such option, the provisions of Section 23.06(d) and this Section 23.06(e) shall apply. Landlord and Tenant agree and acknowledge that such inclusion of the Public Amenity Space within the Hotel Portion in accordance with this Section shall not constitute a Default under this Lease.

(f) In the event that Tenant's interest hereunder shall be submitted to condominium form of ownership pursuant to Article 43, then, notwithstanding any provisions hereof to the contrary, the following provisions shall apply:

(i) the Public Amenity Space shall comprise a separate Public Amenity Unit within the Condominium;

(ii) unless Landlord shall request otherwise, which request shall not be unreasonably declined by the Declarant, the Declarant shall convey title thereto to Landlord on the Condominium Date for consideration of $10.00, by bargain and sale deed (with covenants against grantor's acts), free and clear of any liens or encumbrances

except for the Title Matters, the Condominium Documents, and any liens and encumbrances approved or created by Landlord and Landlord shall accept such conveyance;

(iii) if the conveyance in clause (ii) above shall have occurred, the Public Amenity Space Agreement shall take the form of either (x) a Unit Deed from Landlord to the Public Amenity Entity, with a right of reverter to Landlord from the Public Amenity Entity, together with any related agreements consistent with the provisions hereof, or (y) a lease (which is subject and subordinate to this Lease, and consistent with the terms of this Lease) of the Public Amenity Unit to the Public Amenity Entity, as determined by Landlord;

(iv) if the Public Amenity Unit should become a part of the Hotel Portion pursuant to Section 23.06(d) hereof, and the conveyance in clause (ii) shall have occurred, then the parties agree that the Hotel Unit Sublease shall be amended to include the Public Amenity Unit on substantially the same terms as the applicable terms of the Hotel Unit Sublease for the additional Rent (it being agreed that the rent will increase as provided herein) and otherwise on the applicable terms set forth herein, including Sections 23.06(c), (d) and (e) (it being agreed that any such amendment shall be subject to Tenant's and Landlord's reasonable approval); and

(v) all of the obligations of Tenant under this Section 23.06 with respect to the Public Amenity Space or the Public Amenity Unit shall be assumed by Hotel Unit Sublessee of the Hotel Unit pursuant to the Hotel Unit Sublease.

ARTICLE 24

EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to pay any item of Rental, or any part thereof, when the same shall become due and payable and such failure shall continue for ten (10) days after notice from Landlord to Tenant;

(b) if (i) Commencement of Construction shall not have occurred on or before the Construction Commencement Date (subject to Unavoidable Delays) and such failure shall continue for thirty (30) days after notice from Landlord to Tenant, (ii) Substantial Completion of the Hotel Portion and Substantial Completion of the Public Amenity Core and Shell shall not have occurred within forty-two (42) months from the Construction Commencement Date (subject to Unavoidable Delays) and such failure shall continue for ten (10) days after notice from Landlord to Tenant or (iii) Substantial Completion of the Residential Portion shall not have occurred within forty-two (42) months after the Construction Commencement Date (subject to

Unavoidable Delays) and such failure shall continue for ten (10) days after notice from Landlord to Tenant;

(c) if Tenant shall fail to observe or perform one or more of the terms, conditions, covenants or agreements contained in this Lease other than the obligations referred to in subsection (a), (b), (h), (i) (j), (k), or (l) of this Section 24.01, including, without limitation, any of Tenant's obligations under the provisions of Article 11 of this Lease (except to the extent otherwise provided in Section 24.01(b)), and such failure shall continue for a period of thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such thirty (30) day period (subject to Unavoidable Delays) and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion); provided, however, if such cure is not effected within ninety (90) days following notice of such failure, then Tenant must provide cash collateral, a letter of credit or other cash equivalent collateral in an amount and in form reasonably satisfactory to Landlord to assure to Landlord's satisfaction that such Default shall be cured and that Landlord will be indemnified and held harmless from such Default ("Default Collateral") on or before such ninetieth (90th) day of the cure period, in which event Tenant may continue to diligently prosecute cure of such failure and such Default Collateral shall be returned to Tenant upon such cure, less any sums owed Landlord on account of any damages, losses, costs or expenses, including reasonable attorney's fees actually incurred by Landlord and resulting from such Default.

(d) if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(e) if Tenant shall make an assignment for the benefit of creditors;

(f) if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it, and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, or if Tenant shall take any corporate, partnership, limited liability company or other similar action in furtherance of any action described in Sections 24.01(d), (e) or (f) hereof;

(g) if within sixty (60) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have

been dismissed; or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated;

(h) if this Lease or the estate of Tenant hereunder shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, without Landlord's approval to the extent required hereunder or without compliance with the provisions of this Lease applicable thereto and such transaction shall not be made to comply or voided ab initio within thirty (30) days after notice thereof from Landlord to Tenant;

(i) if a levy under execution or attachment shall be made against the Premises and such execution or attachment shall not be vacated or removed by court order, or otherwise or bonded within a period of thirty (30) days from the date on which Tenant shall have received notice of same;

(j) if Tenant is a corporation, if Tenant shall at any time fail to maintain its corporate existence in good standing, or to pay any corporate franchise tax when and as the same shall become due and payable and such failure shall continue for thirty (30) days after notice thereof from Landlord or any governmental agency to Tenant;

(k) if Tenant shall abandon the Premises;

(l) subject to Section 23.01(a), if Tenant shall fail to operate continuously and without interruption or cause to be operated continuously and without interruption the Building from the date of Completion of the Building to and including the Expiration Date in accordance with the provisions of this Lease and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant (subject to Unavoidable Delays); or

(m) if Tenant shall fail to withdraw the Declaration (x) within sixty (60) days from the recording of the Declaration if the Initial Unit Transfer shall not have occurred within such sixty (60) day period and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant or (y) (1) within 30 days after notice from Landlord to Tenant that the Declaration is filed in violation of the provisions of Article 43 with respect to any such violation which Landlord is actually aware (without investigation), or (2) with respect to all other violations (other than those in the foregoing clause (y)(1)), within 30 days of the filing of the Declaration if the Declaration is filed in violation of the provisions of Article 43, (unless, in the case of violation of Section 43.03(b)(xiii), the Hotel Operator Management Agreement Modification shall have occurred (and any memorandum of the Ritz-Carlton Documents recorded prior to the Hotel Operator Management Agreement Modification shall have been appropriately modified of record to reflect such Hotel Operator Management Agreement Modification) within such 30 day period or the memorandum of the Hotel Unit Management Agreement shall have been withdrawn from record within such 30 day period or Landlord and Hotel Operator shall have entered into an agreement satisfactory to Landlord in its sole and

absolute discretion permitting the recording of the memorandum of the Hotel Unit Management Agreement).

Section 24.02. If an Event of Default shall occur, and Tenant shall fail to cure such Default which was the basis for the Event of Default within 10 days after receipt of written notice from Landlord specifying the items in default, Landlord may elect to declare due and payable a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term exceeds the fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of 8% such sum shall be due and payable ten (10) days after notice by Landlord to Tenant of such election. However, the aforesaid remedy shall not be applicable to a Mortgagee which elects to cure the Default of Tenant pursuant to Section 10.10 or receives a new lease pursuant to Section 10.11. Landlord may also elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

Section 24.03.

(a) If any Event of Default (i) described in Sections 24.01(d), (e), (f) or (g) hereof shall occur, or (ii) described in Sections 24.01(a), (b), (c), (h), (i), (j), (k), (l) or (m) shall occur and Landlord, at any time thereafter, at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than ten (10) days after the giving of such notice, and if, on the date specified in such notice, Tenant shall have failed to cure the Default which was the basis for the Event of Default, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as of the date on which the Event of Default described in clause (i) above occurred or the date specified in the notice given pursuant to clause (ii) above, as the case may be, as if such date were the date herein definitely fixed for the expiration of the Term and Tenant immediately shall quit and surrender the Premises. Anything contained herein to the contrary notwithstanding, if such termination shall be stayed by order of any court having jurisdiction over any proceeding described in Sections 24.01(f) or (g) hereof, or by federal or state statute, then, following the expiration of any such stay, or if the trustee appointed in any such proceeding, Tenant or Tenant as debtor-in-possession shall fail to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if said trustee, Tenant or Tenant as debtor-in-possession shall fail to provide adequate protection of Landlord's right, title and interest in and to the Premises or adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.15 hereof, Landlord, to the extent permitted by law or by leave of the court having jurisdiction over such proceeding, shall have the right, at its election, to terminate this Lease on ten (10) days notice to Tenant, Tenant as debtor-in-possession or said trustee and upon the expiration of said ten (10) day period this Lease shall cease and expire as aforesaid and Tenant, Tenant as debtor-in-possession and/or trustee shall immediately quit and surrender the Premises as aforesaid.

(b) If an Event of Default described in Section 24.01(a) shall occur and Tenant shall fail to cure such Default which was the basis for the Event of Default within ten (10) days after receipt of written notice from Landlord specifying the items in default and Landlord's intention to re-enter and repossess the Premises by reason of such default, or if this Lease shall be terminated as provided in Section 24.03(a), Landlord, without further notice, may re-enter and repossess the Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Tenant by summary proceedings or otherwise.

Section 24.04.

If this Lease shall be terminated as provided in Section 24.03(a) or Tenant shall be dispossessed by summary proceedings or otherwise as provided in Section 24.03(b) hereof:

(a) Tenant shall pay to Landlord all Rental payable by Tenant under this Lease to the date upon which this Lease and the Term shall have expired and come to an end or to the date of re-entry upon the Premises by Landlord, as the case may be; and

(b) Landlord may complete all construction required to be performed by Tenant hereunder and may repair and alter the Premises in such manner as Landlord may deem necessary or advisable (and may apply to the foregoing all funds, if any, then held by Depository or Mortgagee pursuant to Articles 7, 8, or 9) without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall: (A) first, pay to itself the reasonable cost and expense of terminating this Lease, re-entering, retaking, repossessing, completing construction and repairing or altering the Premises, or any part thereof, and the cost and expense of removing all persons and property therefrom, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements, (B) second, pay to itself the reasonable cost and expense sustained in securing any new tenants and other occupants, including in such costs brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing the Premises for reletting, and, if Landlord shall maintain and operate the Premises, the reasonable cost and expense of operating and maintaining the Premises and (C) third, pay to itself any balance remaining on account of the liability of Tenant to Landlord. Landlord in no way shall be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability; and

(c) if Landlord shall not have declared all Rental due and payable pursuant to Section 24.02 hereof, Tenant shall be liable for and shall pay to Landlord, as damages, any deficiency (referred to as "Deficiency") between the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term and the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of Section 24.04(b)

for any part of such period (first deducting from the rents collected under any such reletting all of the payments to Landlord described in Section 24.04(b) hereof); any such Deficiency shall be paid in installments by Tenant on the days specified in this Lease for payment of installments of Rental, and Landlord shall be entitled to recover from Tenant each Deficiency installment as the same shall arise, and no suit to collect the amount of the Deficiency for any installment period shall prejudice Landlord's right to collect the Deficiency for any subsequent installment period by a similar proceeding; and

(d) if Landlord shall not have declared all Rental due and payable pursuant to Section 24.02 hereof, and whether or not Landlord shall have collected any Deficiency installments as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, in lieu of any further Deficiencies, as and for liquidated and agreed final damages (it being agreed that it would be impractical or extremely difficult to fix the actual damage) a sum equal to the amount by which the Rental reserved in this Lease for the period which otherwise would have constituted the unexpired portion of the Term exceeds the then fair and reasonable rental value of the Premises for the same period, both discounted to present worth at the rate of 8% per annum less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of Section 24.04(c) for the same period, it being agreed that if the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

Section 24.05. No termination of this Lease pursuant to Section 24.03(a) or taking possession of or reletting the Premises, or any part thereof, pursuant to Sections 24.03(b) and 24.04(b), shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

Section 24.06. To the extent not prohibited by law, and except as provided in this Lease, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 24. Tenant shall execute, acknowledge and deliver any instruments which Landlord may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 24.07. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rental payable hereunder or any Deficiencies or other sums payable by Tenant to Landlord pursuant to this Article 24, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Tenant and termination.

Section 24.08. Nothing contained in this Article 24 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency,

receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 24.

Section 24.09. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.10. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any and all right of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or re-entry or repossession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease, and Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. The terms "enter", "re-enter" "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meaning.

Section 24.11. No failure by Landlord or any prior landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rental during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 24.12. In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law, Tenant waives any requirement for the posting of bonds or other security in any such action.

Section 24.13. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.14. Tenant shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant also shall pay to Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in enforcing any of the covenants and provisions of this Lease and incurred in any action brought by Landlord against Tenant on account of the provisions hereof, and all such costs, expenses, and reasonable attorneys' fees and disbursements may be included in and form a part of any judgment entered in any proceeding brought by Landlord against Tenant on or under this Lease. All of the sums paid or obligations incurred by Landlord as aforesaid, with interest at the Involuntary Rate, shall be paid by Tenant to Landlord within fifteen (15) days after demand by Landlord.

Section 24.15. If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, shall include, without limitation, the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay to Landlord, on the first day of each month occurring subsequent to the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly

period, but, in no event, an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire, at its sole cost and expense, such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay to Landlord within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit as may be required by law or ordered by the court;

(g) that Tenant has and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord be granted a security interest acceptable to Landlord in Tenant's leasehold hereunder (which shall not include interest of any officers, directors, shareholders, employees or partners), to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. Section 365, as the same may be amended) to any Person who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the trustee, Tenant or Tenant as debtor-in-possession, then notice of such proposed assignment, setting forth (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. Section 365(b)(3) (as the same may be amended), shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days prior to the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the assignment of this Lease.

Section 24.16. Nothing contained in this Article 24 shall be deemed to modify the provisions of Sections 10.10 or 10.11 hereof.

Section 24.17. Notwithstanding anything to the contrary contained in this Article 24, from and after the Condominium Date, Landlord and Tenant agree that (i) Landlord shall not have the right to terminate this Lease pursuant to Section 24.03(a) or to repossess the Premises or dispossess Tenant pursuant to Section 24.03(b), except as expressly permitted pursuant to Section 43.09(g), (ii) Landlord shall not have the right to accelerate any Rent applicable to the Residential Portion (including Residential Proportionate Rent) pursuant to Section 24.02, and (iii) Landlord shall not have the right to exercise any comparable right or remedy at law or in equity or otherwise that would result in the termination of this Lease or the dispossession of Residential Unit Owners hereunder (except in the circumstances provided in Section 43.09(g)) or the acceleration of any Rent payable with respect to the Residential Portion. Nothing herein shall be deemed to limit Landlord's remedies under Article 43, or Landlord's remedies, as Hotel Unit Sublessor, under the Hotel Unit Sublease against the Hotel Unit Sublessee.

Notwithstanding any provision of this Lease to the contrary, from and after the Condominium Date, in no event shall the Unit Owner of any Residential Unit be liable for, nor shall any such Residential Unit be subject to any lien or judgment in respect of, (x) any Hotel Rent payable hereunder, whether by acceleration or otherwise and/or (y) any monetary damages or liability caused by any failure of the Hotel Unit Sublessee to perform and/or observe any of the terms and provisions of the Hotel Unit Sublease.

ARTICLE 25

NOTICES

Section 25.01. Whenever it is provided in this Lease that a notice, demand, request, consent, approval or other communication shall or may be given to or served upon either of the parties by the other, or by Landlord upon any Mortgagee, and whenever either of the parties shall desire to give or serve upon the other any notice, demand, request, consent, approval, or other communication with respect hereto or the Premises, each such notice, demand, request, consent, approval, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(a) if by Landlord, by personal delivery with receipt acknowledged or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested or by FedEx or other similar reputable national overnight courier service, addressed to Tenant c/o Millennium Partners LLC, 1995 Broadway, New York, New York 10023, Attn: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attn: Eric R. Landau, Esq., or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord as aforesaid and, in the case of any notice required to be given to any Mortgagee pursuant to this Lease, to each such Mortgagee at the address of such Mortgagee set forth in the notice mentioned in the first sentence of Section 10.10(a) hereof; and

(b) if by Tenant, by personal delivery with receipt acknowledged or by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, addressed to Landlord at One World Financial Center, New York, New York 10281, Attn: President (with a copy, given in the manner provided above, addressed to the attention of Landlord's General Counsel, at the address set forth above or at such other address as Landlord may from time to time designate by notice to Tenant as aforesaid) with an additional copy to Torys, 237 Park Avenue, New York, New York 10017, Attn: Miroslav M. Fajt, Esq. or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant as aforesaid.

Section 25.02. Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received). Any notice sent by Tenant to Landlord may be sent by Tenant's agent or attorneys.

ARTICLE 26

CONSTRUCTION AND MAINTENANCE OF THE CIVIC FACILITIES

Section 26.01. (a) The term "Civic Facilities" shall include the following improvements in Phase III of the Project Area:

(i) Electrical, gas and telephone mains;[1]

(ii) Water mains;[2]

(iii) Sanitary and storm sewers;[2]

(iv) Fire hydrants and Emergency Response Service ("ERS") conduits and boxes;[2]

(v) Street lighting (conduit, cable, poles, fixtures and connections);[2]

(vi) Streets;[2]

(vii) Curbs;[2]

(viii) Temporary concrete sidewalks;

(ix) Permanent sidewalks, including cobble strip and paving;

(x) Landscaped esplanade, including appurtenances located within the pierhead line of the Project Area and South Cove ("Phase III Esplanade");

(xi) Landscaped park and public open space ("Wagner Park");

(xii) Street trees;

(xiii) Public works of art; and

(xiv) Public Open Space and Sidewalk Easement as described in the Design Guidelines and Section 23.01(b)(v).

(b) (i) Subject to Unavoidable Delays, Tenant shall commence and diligently complete on or before the Scheduled Completion Date in accordance with the Construction Documents and the specifications provided or approved by Landlord, the construction or installation of Tenant's Civic Facilities, in each case, in a good and workmanlike manner and in compliance with normal New York City construction rules and all applicable Requirements.

The term "Tenant's Civic Facilities" shall mean those Civic Facilities along streets adjacent to the Premises identified in clauses (viii), (ix) in accordance with specifications to be supplied by Landlord, (xii) in accordance with specifications to be supplied by Landlord and (xiv) of Section 26.01(a) hereof. The term "Landlord's Civic Facilities" shall mean all of the Civic Facilities which are not included within the definition of Tenant's Civic Facilities.

(ii) Landlord and Tenant acknowledge that all of Landlord's Civic Facilities have been completed other than the top course on the streets adjacent to the Premises.

Section 26.02. Landlord and Tenant shall take good care of and be responsible for compliance with Requirements in respect of Landlord's Civic Facilities or Tenant's Civic Facilities, as the case may be, and shall keep and maintain the same in good and safe order and condition and free of accumulations of dirt, rubbish, snow and ice, and shall make all repairs (including structural repairs, restorations and replacements) necessary to maintain the same in first-class condition (collectively, "Maintenance Obligations"), except that (i) if Tenant installs temporary concrete sidewalks adjacent to the Premises, then Tenant shall perform Maintenance Obligations in respect of same and (ii) provided that Tenant previously has caused the street trees referred to in Section 26.01(b) to be installed in accordance with the requirements of this Article 26, from and after the first anniversary of the proper installation of such trees, Landlord shall perform Maintenance Obligations in respect of said street trees. The obligation of Landlord to perform Maintenance Obligations is expressly conditioned upon Tenant's compliance with Tenant's obligations under Section 26.04. The parties contemplate that, after the completion of construction pursuant to Section 26.01, Maintenance Obligations for the portion of the Civic Facilities marked[1] shall be performed by the appropriate utility companies and for those portions of the Civic Facilities marked[2] shall be performed by New York City. Notwithstanding the initial sentence of this Section 26.02, Maintenance Obligations on the part of Landlord in respect of any portion of the Civic Facilities marked[1] and[2] shall terminate on the date that the appropriate utility company or New York City, as the case may be, shall commence performance of Maintenance Obligations in respect of same.

Section 26.03.

(a) Tenant's sole remedies for a failure by Landlord to substantially complete Landlord's Civic Facilities as provided in Section 26.01 ("Landlord's Construction Obligations") shall be (i) an extension of the Scheduled Completion Date by an amount of time equal to the time, if any, by which Tenant's construction of the Building has been delayed as a result of such failure, which delay shall constitute an Unavoidable Delay, and (ii) the right to engage in Self-Help, as defined in Section 26.03(b), and to receive the offset against Base Rent and Civic Facilities Payment provided for in Section 26.03(c) (collectively, the "Approved Remedies"). Landlord's failure to perform Landlord's Construction Obligations shall not give rise to any right or remedy except the Approved Remedies, or entitle Tenant to any discount from or offset against any Rental except as set forth in Section 26.03(c) or to any other damages, and no delay, non-performance or part performance by Landlord under Section 26.01 shall release Tenant from or modify any of its obligations under this Lease except as provided herein. Tenant's sole remedies against Landlord for a failure by Landlord to perform its Maintenance Obligations in accordance with Section 26.02 shall be the right to engage in Self-Help and to receive the offset against Civic Facilities Payments provided for in Section 26.03(c), and no such failure shall entitle Tenant to any other right, remedy or damages against Landlord. Notwithstanding the provisions of Section 26.03(b), Tenant shall not be entitled to exercise any of the Approved Remedies at any time that a Default exists under this Lease. No delay, non-performance or part performance by Landlord under Section 26.02 shall release Tenant from any of its obligations under this Lease. The election by Tenant of any remedy specified in this Section 26.03(a) shall not preclude Tenant from pursuing any other available remedy specifically set forth herein.

(b) If (subject to Unavoidable Delays) Landlord fails to perform the Landlord's Construction Obligations or thereafter to substantially complete Landlord's Civic Facilities as provided in Section 26.01 with reasonable diligence or if Landlord fails to perform any of Landlord's Maintenance Obligations, Tenant (in its own name and not as agent of Landlord) shall have the right (but shall not be obligated) to undertake Landlord's Construction Obligations or Landlord's Maintenance Obligations, as the case may be ("Self-Help"), in accordance with the provisions of this Section 26.03(b). Prior to engaging in Self-Help, Tenant shall give Landlord notice specifying the nature of Landlord's failure and advising of Tenant's intention to engage in Self-Help. If Landlord shall not have remedied the failure complained of prior to the thirtieth (30th) day after such notice, Tenant shall be entitled to engage in Self-Help, provided that, if such failure shall be of a nature that the same cannot be completely remedied within said thirty (30) day period, Tenant shall not be entitled to engage in Self-Help if Landlord commences to remedy such failure within such period and thereafter diligently and continuously proceeds to remedy same. A copy of any notice given to Landlord pursuant to this Section 26.03(b) shall be sent to all other tenants of Landlord in Phase III of whose names and addresses Landlord shall have given Tenant notice, and, in the event Tenant engages in Self-Help, Tenant shall use its best efforts to cooperate with such other tenants and to coordinate any actions taken in furtherance thereof with the actions of any tenant(s) that may elect to engage in Self-Help under the applicable provision(s) of any other lease(s) entered into by Landlord with respect to Phase III. In furtherance of Tenant's exercise of the right of Self-Help set forth in this Section 26.03(b), Landlord, upon reasonable notice, shall permit Tenant and its agents or

representatives to inspect Landlord's Civic Facilities at all reasonable times for the purpose of determining whether or not Landlord is in compliance with Landlord's Construction Obligations and Landlord's Maintenance Obligations. Landlord hereby grants Tenant a right to enter upon Landlord's Civic Facilities in order to perform Self-Help in accordance with this Section 26.03(b). Tenant shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Landlord by reason of Tenant's exercise of the right of Self-Help hereunder, provided Tenant shall use reasonable efforts to minimize damage caused by Tenant in the exercise of its right of Self-Help.

(c) In the event Tenant engages in Self-Help as provided in Section 26.03(b) with respect to Landlord's Construction Obligations, after submission to Landlord of a written statement of Tenant's expenses with supporting documentation, Tenant shall have the right to offset against the next installment(s) of Base Rent and Civic Facilities Payment an amount equal to the reasonable expenses thereby incurred and/or theretofore paid by Tenant together with interest thereon at the Involuntary Rate computed with respect to each payment made by Tenant under this Section 26.03(c) from the date payment is made or incurred until the date(s) Tenant effectuates the offset(s). In the event Tenant engages in Self-Help as provided in Section 26.03(b) with respect to Landlord's Maintenance Obligations, after submission to Landlord of a written statement of Tenant's expenses with supporting documentation, Tenant shall have the right to offset against the next installment(s) of Civic Facilities Payment an amount equal to the reasonable expenses thereby incurred and/or theretofore paid by Tenant together with interest thereon at the Involuntary Rate computed with respect to each payment made by Tenant under this Section 26.03(c) from the date payment is made or the expense is incurred until the date(s) Tenant effectuates the offset(s).

(d) In the event Landlord shall fail to perform Landlord's Construction Obligations or Landlord's Maintenance Obligations, Landlord shall incur no penalty or liability and Tenant shall have no remedies or rights other than as expressly provided herein, it being agreed by the parties that Landlord's failure to perform Landlord's Construction Obligations or Landlord's Maintenance Obligations shall not be deemed a failure by Landlord to perform a substantial obligation on Landlord's part to be performed under this Lease.

Section 26.04. As its allocable share of the cost of operating, maintaining, repairing, restoring, replacing and upgrading Wagner Park, the Phase III Esplanade, the curbs referred to in Section 26.01(a)(vii) and the street trees referred to in Section 26.01(a)(xii) and (b), including, at Landlord's election, the costs of creating and maintaining a reasonable reserve fund and of insuring the Civic Facilities or any part thereof (such costs being hereinafter referred to as "Operating Costs"), Tenant, for each Lease Year or portion thereof commencing on the dates indicated below and ending on the last day of the Term, shall pay to Landlord an annual sum (the "Civic Facilities Payment") determined as follows:

(a) With respect to the Hotel Portion:

(i) for the third Lease Year, One Hundred Six Thousand Eight Hundred Forty Seven Dollars ($106,847); and

(ii) for each Lease Year thereafter, the Civic Facilities Payment with respect to the Hotel Portion shall be increased by an amount equal to the Civic Facilities Payment with respect to the Hotel Portion for the prior Lease Year multiplied by (a) three percent (3%) or (b) the percentage increase in the CPI from the first day of the prior Lease Year to the first day in the current Lease Year, whichever is greater.

(b) With respect to the Residential Portion:

(i) for the third and fourth Lease Years an amount equal to the product obtained by multiplying the number of residential apartment units in the Residential Portion by Two Hundred Eighty Dollars ($280.00);

(ii) for each of the next three (3) Lease Years, an amount equal to the product obtained by multiplying the number of residential apartment units in the Residential Portion by Three Hundred Thirty Dollars ($330.00);

(iii) for the next succeeding Lease Year and for each Lease Year thereafter, an amount equal to the product of (A) Wagner Park Budget multiplied by (B) 0.11887 (said figure being computed by dividing the number of square feet of floor area in the Residential Portion by the total number of square feet of floor area in all residential buildings in Phase III); and

(iv) for the period referred to in the preceding clause (iii), with respect to the Phase III Esplanade, an amount equal to the product of (A) the Phase III Esplanade Budget multiplied by (B) 0.11887 (said figure being computed as set forth in the preceding clause (iii)).

Except that, in lieu of clauses (b)(iii) and (b)(iv) above, Landlord, at its sole option and at any time, may establish as an alternative method for determining such allocable share of the Operating Costs and the amount of the Civic Facilities Payment for the Residential Portion either (A) that Tenant would pay as its share an amount equal to the product of (x) the sum of the Parks Budget and the Residential Esplanade Budget, less amounts payable toward such budgets by other tenants of Landlord in the Project Area under leases which were originally entered into prior to January 1, 1988 ("Prior Tenants") multiplied by (y) 0.050407 (said figure being computed by dividing the number of square feet of floor area in the Building by the total number of square feet of floor area in all residential buildings, including the Building, in the Project Area permitted by the Zoning Resolution of the City of New York, as such number may be reduced by the Design Guidelines pertaining to such residential buildings, less the number of square feet of floor area in the residential buildings of such Prior Tenants).

Notwithstanding the provisions of the foregoing clauses (iii) and (iv) above, with respect to the Residential Portion, the amount of Tenant's Civic Facilities Payment with respect to the Residential Portion for any Lease Year referred to therein shall not be greater than one hundred twenty-five percent (125%) of Tenant's Civic Facilities Payment with respect to the Residential Portion for the prior Lease Year.

(c) For each Lease Year commencing with the Lease Year referred to in Section 26.04(b)(iii) (each such Lease Year or portion thereof being hereinafter referred to as a "Residential Portion Payment Period") Landlord shall submit to Tenant (i) an estimate of the Operating Costs for Wagner Park, the curbs referred to in Section 26.01(a)(vii) and the street trees referred to in Section 26.01(a)(vi) and 26.01(b) for such Residential Portion Payment Period (the "Wagner Park Budget") and (ii) an estimate of the Operating Costs for the Phase III Esplanade for such Residential Portion Payment Period (the "Phase III Esplanade Budget"; the Wagner Park Budget and the Phase III Esplanade Budget collectively, the "Civic Facilities Budget"). The Wagner Park Budget shall be an amount computed by multiplying (A) the estimated Operating Costs of all parks (as such term is reasonably defined by Landlord) in or adjacent to the Project Area other than parks situated in the area described in the final sentence of this Section 26.04(c) (the "Residential Parks") and all curbs and street trees installed in the Project Area except in the area described as aforesaid (the "Parks Budget") by (B) a fraction, the numerator of which shall be the number of square feet in Wagner Park and the denominator of which shall be the total number of square feet in all Residential Parks. The Phase III Esplanade Budget shall be an amount computed by multiplying (A) the estimated Operating Costs of the entire esplanade in the Project Area other than such portion of the esplanade as extends along the North Cove from (i) the point where the northern line of Liberty Street as extended intersects the North Cove to (ii) the point where the extension of the western line of North End Avenue intersects the North Cove (the entire esplanade in the Project Area minus such excepted portion being referred to as the "Residential Esplanade" and the Operating Costs for the Residential Esplanade being referred to as the "Residential Esplanade Budget") by (B) a fraction the numerator of which is the number of linear feet of the Phase III Esplanade and the denominator of which is the total number of linear feet of the Residential Esplanade. Tenant shall pay to Landlord the Civic Facilities Payment due with respect to the Residential Portion during each such Residential Portion Payment Period in equal monthly installments payable in advance on the first day of each month that occurs within such Residential Portion Payment Period. As soon as shall be practicable after the end of such Residential Portion Payment Period, Landlord shall submit to Tenant a statement setting forth the Operating Costs incurred by Landlord during such Residential Portion Payment Period, together with supporting documentation. Within ten (10) days of the date any such statement and documentation are submitted to Tenant, Tenant shall pay the amount, if any, by which Tenant's allocable share of Operating Costs for the applicable Payment Period exceeds the Civic Facilities Payment with respect to the Residential Portion made by Tenant during such Residential Portion Payment Period. In the event the Civic Facilities Payment with respect to the Residential Portion made by Tenant during any Residential Portion Payment Period exceeds Tenant's allocable share of Operating Costs, Tenant shall have the right to offset against the next monthly installments of Civic Facilities Payment with respect to the Residential Portion the amount of such excess. The area referred to in the second sentence of this Section 26.04(c) is bounded on the south by the northern line of Liberty Street extended west to the North Cove, on the west by proceeding from said line as extended along North Cove to the extension of the western line of North End Avenue and then along said western line as extended to the southern line of Vesey Street, on the north by proceeding along said southern line to the western line of Marginal Street, Wharf of Place, and on the east by the western line of Marginal Street, Wharf of Place between the southern line of Vesey Street and the northern line

of Liberty Street, all as shown on survey L.B.-45-BZ by Benjamin D. Goldberg (Earl B. Lovell-S.P. Belcher, Inc.), prepared February 23, 1983, last amended May 27, 1983.

(d) It is understood and agreed by Tenant that, except as provided in Section 26.04(b)(iii) and (iv) hereof, the Civic Facilities Payment, including the annual escalations, is an agreed-upon fixed amount which does not necessarily reflect the actual costs of maintaining the Civic Facilities, the actual percentage share thereof of Tenant or the actual annual increase in such costs, and that the Civic Facilities Payment shall neither increase nor decrease in proportion to any increases or decreases in the actual Civic Facilities costs.

Section 26.05. If all or any part of Landlord's Civic Facilities shall be destroyed or damaged in whole or in part by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Landlord, at no cost and expense to Tenant, whether or not such damage or destruction shall have been insured or insurable, and whether or not insurance proceeds, if any, shall be sufficient for the purpose shall restore or cause to be restored with reasonable diligence (subject to Unavoidable Delays) such Civic Facilities as nearly as practicable to the character and utility existing immediately prior to such occurrence and using materials of equal or better quality.

Section 26.06. If at any time during the Term there shall be a taking by any lawful power or authority through the exercise of the right of condemnation or eminent domain of the whole or a part of Landlord's Civic Facilities or there shall be an agreement in lieu of a taking between Landlord and those authorized to exercise such right, Landlord shall receive the award attributable to the Civic Facilities so taken, as provided in Article 9, and Landlord, at Landlord's sole cost and expense, whether or not the award or awards, if any, payable to Landlord are sufficient for the purpose, shall proceed with reasonable diligence (subject to Unavoidable Delays) to restore to the extent practicable any remaining portion of the Civic Facilities not so taken to a complete, self-contained unit. Landlord shall hold the award or awards received by it with respect to such taking in trust for the sole purpose of paying the cost of restoring the remaining portion of the Civic Facilities not so taken, and Landlord shall apply such award or awards first to the payment in full of the cost of such restoration before using any part of the same for any other purpose. Anything contained herein to the contrary notwithstanding, in no event shall Landlord's liability hereunder as trustee exceed the amount of the award or awards received by Landlord, as reduced by the portion thereof applied to the restoration. Upon completion of the restoration, Landlord may pay over to itself the unapplied award or awards and the trust obligations hereunder with respect to such award or awards shall terminate.

ARTICLE 27

STREETS

Landlord represents and warrants that within the Project Area, First Place and Battery Place have been mapped as New York City public streets and will open for public use prior to Completion of the Building. In addition, Landlord has executed a lease with the New York City dated as of June 30, 1991 for area adjacent to the Premises known as "Little West

Street", and Landlord represents that a portion of Little West Street adjacent to the Premises shall be open for vehicular access by Tenant.

ARTICLE 28

STREET WIDENING

If at any time during the Term any proceedings are instituted or orders made by any Governmental Authority (other than Landlord acting in its capacity as Landlord and not in its governmental capacity) for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alterations upon the Premises, or in the sidewalks, vaults (other than vaults which are under the control of, or are maintained or repaired by, a utility company), gutters, curbs or appurtenances, Tenant, with reasonable diligence (subject to Unavoidable Delays) shall comply with such requirements, and on Tenant's failure to do so, Landlord may comply with the same in accordance with the provisions of Article 21. Tenant shall be permitted to contest in good faith any proceeding or order for street widening instituted or made by any Governmental Authority, provided that during the pendency of such contest Tenant deposits with Landlord security in amount and form reasonably satisfactory to Landlord for the performance of the work required in the event that Tenant's contest should fail. In no event shall Tenant permit Landlord to become liable for any civil or criminal liability or penalty as a result of Tenant's failure to comply with reasonable diligence (subject to Unavoidable Delays) with any of the foregoing orders. Any widening or other enlargement of any such street and the award or damages in respect thereto shall be deemed a partial condemnation and be subject to the provisions of Article 9.

ARTICLE 29

SUBORDINATION; ATTORNMENT

Section 29.01. Landlord's interest in this Lease, as this Lease may be modified, amended or supplemented, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease including, without limitation, a lien filed pursuant to Section 339-Z and Section 339aa of the Condominium Act.

Section 29.02. Master Landlord and Tenant are simultaneously herewith executing that certain Master Landlord Non-Disturbance and Recognition Agreement which shall be in form attached hereto as Exhibit J (the "Master Landlord Recognition Agreement"), which is binding on Master Landlord's successors and assigns and benefits Tenant's successors and assigns, and which provides that if the Master Lease is terminated, (i) Landlord (or the then holder of the reversionary interest in the premises demised by this Lease) will recognize Tenant under this Lease and (ii) Tenant will attorn to Landlord (or the then holder of the reversionary interest in the premises demised by this Lease) and will recognize such holder as Tenant's landlord under this Lease. Either party shall, upon the request of the other, execute and deliver

any further instrument which may be reasonably necessary or appropriate to evidence such recognition and attornment. Tenant waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event any proceeding is brought by the Master Landlord to terminate the Master Lease, and agrees that this Lease shall not be affected in any way whatsoever by any such proceeding.

ARTICLE 30

EXCAVATIONS AND SHORING

If any excavation shall be made or contemplated to be made for construction or other purposes upon property adjacent to the Premises, Tenant either:

(a) shall afford to Landlord or, at Landlord's option, to the person or persons causing or authorized to cause such excavation the right to enter upon the Premises in a reasonable manner for the purpose of doing such work as may be necessary, without expense to Tenant, to preserve any of the walls or structures of the Building from injury or damage and to support the same by proper foundations, provided that (i) such work shall be done promptly, in a good and workmanlike manner and subject to all applicable Requirements and subject to the applicable provisions of this Lease, (ii) Tenant shall have an opportunity to have its representatives present during all such work and (iii) Tenant shall be indemnified by Landlord in the event Landlord performs such excavation, or such other person performing such excavation, as the case may be, against any injury or damage to the Building or persons or property therein which may result from any such work, but shall not have any claim against Landlord for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder; or

(b) shall do or cause to be done all such work, at Landlord's or such other person's expense, as may be necessary to preserve any of the walls or structures of the Building from injury or damage and to support the same by proper foundations, provided that Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement, offset or reduction of Rental payable by Tenant hereunder.

ARTICLE 31

CERTIFICATES BY LANDLORD AND TENANT

Section 31.01. At any time and from time to time upon not less than ten (10) days notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge.

Section 31.02. At any time and from time to time upon not less than ten (10) days notice by Tenant, Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rental has been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Default of which Landlord may have knowledge.

Section 31.03. At the request of Tenant, Landlord shall request a certificate in respect of the Master Lease from Master Landlord, in accordance with Section 20.01 of the Master Lease. If Master Landlord shall fail to deliver such a certificate, then, in lieu thereof, Landlord shall execute, acknowledge and deliver to Tenant a statement certifying that Landlord has not executed and delivered to Master Landlord any instrument modifying the Master Lease (or if Landlord has executed such an instrument, stating the modifications) and that, to the best of Landlord's knowledge, the Master Lease is in full force and effect and no default exists thereunder.

ARTICLE 32

CONSENTS AND APPROVALS

Section 32.01. Except as otherwise expressly set forth in this Lease, all consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 32.02. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is required, then unless expressly provided otherwise in this Lease, if the party who is to give its consent or approval shall not have notified the other party within fifteen (15) Business Days or such other period as expressly specified in this Lease after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 32.03. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval shall, in addition, not be unreasonably delayed.

Section 32.04. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

Section 32.05 If, pursuant to the terms of this Lease, Landlord shall be deemed to have consented to or approved any request, matter or thing, or Landlord shall be deemed to have waived any rights, terms or conditions hereof if Landlord shall not have responded within a specified period of time to any request from Tenant for any such consent, approval or waiver, then, notwithstanding any provisions of this Lease to the contrary, Landlord shall not be bound thereby and shall be deemed not to have provided such consent, approval or waiver unless:

(x) Tenant's request is in writing, addressed and delivered to Landlord as specified in Article 25 of this Lease;

(y) Tenant's written notice or request specifically states in bold letters that Landlord shall be deemed to grant its consent, approval or waiver if it does not respond within a specified time; and

(z) such notice expressly states the date and time by which Landlord must respond thereto in order to avoid being deemed to have granted any such consent, approval or waiver, and refers to the applicable Section of this Lease which specifies such time period.

ARTICLE 33

SURRENDER AT END OF TERM

Section 33.01. On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall remove its personal property (other than any Equipment) and shall well and truly surrender and deliver up to Landlord the Premises and Equipment in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances including, without limitation, Unit Owners' rights under any Condominium Plan or otherwise with respect to their Units, other than those, if any, existing at the date hereof, created by or consented to by Landlord or which lettings and occupancies by their express terms and conditions extend beyond the Expiration Date, and which Landlord shall have consented and agreed, in writing, may extend beyond the Expiration Date, without any payment or allowance whatever by Landlord. Notwithstanding anything to the contrary contained herein or in the Condominium Documents, Landlord's review of the Condominium Documents shall not create nor be deemed to have created a letting or occupancy which would extend beyond the Term or

upon any earlier termination of this Lease. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 33.02. On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 24 hereof, Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases and of any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, permanent or temporary Certificates of Occupancy then in effect for the Building, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed by or on behalf of Tenant in the Premises, together with a duly executed assignment thereof to Landlord, all financial reports, books and records required by Article 38 hereof and any and all other documents of every kind and nature whatsoever relating to the Premises.

Section 33.03. Landlord shall not acquire and shall have no right to use the name "Ritz-Carlton" or any other trade name under which Hotel Operator shall operate from time to time. Any personal property of Tenant, or of any Subtenant or Unit Owner which shall remain on the Premises for thirty (30) days after the termination of this Lease and after the removal of Tenant, or such Subtenant or Unit Owner from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant, or such Subtenant or Unit Owner and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant, or any Subtenant or Unit Owner.

Section 33.04. The provisions of this Article 33 shall survive any termination of this Lease.

ARTICLE 34

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, between them other than as herein or therein set forth and other than as may be expressly contained in any written agreement between the parties executed simultaneously herewith.

ARTICLE 35

QUIET ENJOYMENT

Landlord covenants that Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or

from Landlord or any Person claiming through Landlord and free of any encumbrance created or suffered by Landlord, except those encumbrances, liens or defects of title, created or suffered by Tenant and the Title Matters.

ARTICLE 36

APPRAISAL AND ARBITRATION

Section 36.01. In such cases where this Lease expressly provides for the settlement of a dispute or question by appraisal, and only in such cases, Landlord and Tenant shall jointly select an appraiser which has not performed, for a period of at least 10 years prior to his or her engagement any professional services for either Landlord, Tenant or Master Landlord. If within a fifteen (15) day period the parties have not so agreed, then either party, on behalf of both, may apply to the Supreme Court of the State of New York, New York County, for the appointment of such appraiser and the other party shall not raise any question as to the Court's full power and jurisdiction to entertain the application and make the appointment. Any appraiser selected or appointed pursuant to this Section shall be a member of the American Institute of Real Estate Appraisers (or a successor organization), shall be an appraiser, and shall have been doing business as such in the Borough of Manhattan for a period of at least fifteen (15) years before the date of her/his appointment. All appraisers chosen or appointed pursuant to this Section 36 shall be sworn to fairly and impartially perform their duties as appraisers hereunder. In the event of failure, refusal or inability of any appraiser to act, a successor shall be appointed within ten (10) days by the parties or in the event the parties shall fail so to appoint such successor, the successor shall be appointed by the Court in the manner hereinabove provided. The fees and expenses of all appraisers shall be shared jointly by the parties. Each party shall be responsible for the fees and expenses of its own attorneys and other representatives. Photocopies of the reports of all appraisers shall be provided to all the parties. The decision of the appraisers shall be binding upon the parties. In rendering its decision, the appraisers shall have no power to modify or reform any of the provisions of this Lease. Any appraisal shall be conducted in the City and County of New York.

Section 36.02. In such cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within fifteen (15) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for

a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Section 36.02, shall be in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body. The expenses of arbitration shall be shared equally by Landlord and Tenant, but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary, modify or reform any of the provisions of this Lease and their jurisdiction is limited accordingly. If the arbitration takes place pursuant to Article 11 hereof or concerns any Capital Improvement or Restoration, then each of the arbitrators shall be a disinterested licensed professional engineer or registered architect having at least ten (10) years' experience in the design of commercial buildings, and, to the extent applicable and consistent with this Section 36.02, such arbitration shall be conducted in accordance with the Construction Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function.

Section 36.03 Any Mortgagee shall have the right to attend any arbitration under this Lease, provided that such Mortgagee's attendance shall be with and on the side of Tenant, and not as a third party. If Landlord gives notice requesting arbitration as provided in this Lease, Landlord shall simultaneously serve a duplicate of the arbitration notice on each Mortgagee who shall have previously furnished its name and address to Landlord in writing, provided, however, if notice has been served to Mortgagee then Mortgagee's failure to attend all or any part of the arbitration proceedings shall not render the arbitrator's decision not binding or otherwise affect the validity of the arbitration proceedings. In addition, if Tenant fails to appoint an arbitrator as provided in Section 36.02(a) hereof, any Mortgagee shall be entitled to appoint an arbitrator to represent the interest of Tenant which arbitrator shall be recognized in all respects as if such arbitrator had been appointed by Tenant. Notwithstanding anything to the contrary contained herein, if at the time in question there shall be more than one Mortgagee, then the rights and privileges offered by this Section 36.02(b) shall be available to the Mortgagee(s) in the same order of priority as the order of priority of the Mortgage(s) of such Mortgagee(s) as liens on Tenant's interest in this Lease.

ARTICLE 37

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Lease shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Lease. The parties further agree to modify any such unenforceable provision of this Lease in lieu of severing such unenforceable provision from this Lease in its entirety, whether by rewriting the offending

provision, deleting any or all of the offending provision, adding additional language to this Lease, or by making such other modifications as it deems warranted to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Lease as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Lease be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Lease shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

ARTICLE 38

FINANCIAL REPORTS

Section 38.01. Tenant, from and after the Hotel Opening Date or the date upon which any portion of the Premises is subleased or occupied or rents or other charges are received by Tenant for the use or occupancy thereof, shall furnish to Landlord the following:

(a) With respect to the Hotel Portion, as soon as practicable after the end of each Lease Year, and, in any event, within one hundred twenty (120) days thereafter, financial statements of Tenant and of the operations of the Hotel Portion (including, without limitation, balance sheets, income statements and funds statements showing changes in financial position) for such Lease Year, setting forth, in accordance with Accounting Principles, in each case, in comparative form, the corresponding figures for the previous fiscal year, all in reasonable detail and examined and reported upon, with an opinion thereon, by a Certified Public Accountant in accordance with generally accepted auditing standards and with Accounting Principles who shall render a written report thereon to Landlord.

(b) With respect to the Residential Portion, (i) prior to the occurrence of the Condominium Date as soon as practicable after the end of each fiscal year of Tenant, and in any event within ninety (90) days thereafter, Tenant shall furnish, or caused to be furnished, to Landlord financial statements of the operations of the Residential Portion, for such year, setting forth in each case, in comparative form, the corresponding figures for the previous fiscal year, all in reasonable detail and accompanied by a report and opinion thereon of a Certified Public Accountant, and which report and opinion shall be prepared in accordance with Accounting Principles and (ii) after the occurrence of the Condominium Date, as soon as practicable after the end of each fiscal year of such condominium and, in any event, within one hundred and fifty (150) days after the end of such fiscal year, the annual financial report of the condominium which is submitted by the Condominium Board to Unit Owners.

Section 38.02. Upon Landlord's request, if at any time Tenant shall furnish to any Mortgagee operating statements or financial reports, Tenant promptly shall furnish to Landlord copies of all such operating statements and financial reports. At the time at which Tenant furnishes any such operating statements or reports, Tenant may inform Landlord of its belief that the public disclosure of information contained therein or any part thereof would cause substantial

injury to the competitive position of Tenant's enterprise and request that, to the extent permitted by law, Landlord attempt to avoid such disclosure. In the event Tenant makes such request, Landlord shall use its best efforts to avoid such disclosure (but shall incur no liability to Tenant if Landlord reasonably believes it is complying with any provision of applicable law requiring such disclosure). Landlord shall (i) promptly notify Tenant if it receives any request for disclosure, (ii) keep Tenant advised of (and promptly copy Tenant on) any communications that Landlord has with (or receives from) any party making the request for disclosure, (iii) notify Tenant that it intends to make any disclosure, immediately after making any such decision and at least five (5) Business Days prior to the actual disclosure and (iv) copy Tenant on any such disclosure.

Section 38.03. Tenant shall keep and maintain, or shall cause to be kept and maintained, at all times full and correct records and books of account of the operations of the Premises in accordance with Accounting Principles and otherwise in accordance with any applicable provisions of each Mortgage and accurately shall record and preserve for a period of six (6) years the record of its operations upon the Premises. Within fifteen (15) days after request by Landlord, Tenant shall make said records and books of account available from time to time for inspection by Landlord and Landlord's designee during reasonable business hours at a location designated by Tenant in New York City. At any time at which Tenant shall make said records and books of account available for inspection, it may inform Landlord of its belief that the public disclosure of the information contained therein or any part thereof would cause substantial injury to the competitive position of Tenant's enterprise and request that to the extent permitted by law Landlord attempt to avoid such disclosure. In the event Tenant makes such request, Landlord shall use its best efforts to avoid such disclosure (but shall incur no liability to Tenant if Landlord reasonably believes it is complying with any provision of applicable law requiring such disclosure). Landlord shall (i) promptly notify Tenant if it receives any request for disclosure, (ii) keep Tenant advised of (and promptly copy Tenant on) any communications that Landlord has with (or receives from) any party making the request for disclosure, (iii) notify Tenant that it intends to make any disclosure, immediately after making any such decision and at least five (5) Business Days prior to the actual disclosure and (iv) copy Tenant on any such disclosure.

ARTICLE 39

RECORDING OF MEMORANDUM

Either Landlord or Tenant may record a memorandum of this Lease or any amendment or modification of this Lease. Each shall, upon the request of the other, join in the execution of a memorandum of this Lease or a memorandum of any amendment or modification of this Lease in proper form for recordation and any documents required to record the same.

ARTICLE 40

NO DISCRIMINATION

Section 40.01. Tenant, in connection with the erection, maintenance, repair, Restoration, alteration or replacement of, or addition to, the Building shall (a) not discriminate nor permit discrimination against any person by reason of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and (b) comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect prohibiting such discrimination.

Section 40.02. Tenant shall be bound by and shall include the following paragraphs (a) through (e) of this Section 40.02 in all Construction Agreements, service and management agreements and agreements for the purchase of goods and services relating to the operation of the Premises in such manner that these provisions shall be binding upon the parties with whom such agreements are entered into (any party being bound by such provisions shall be referred to in this Section as "Contractor"):

(a) Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status, shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations from time to time in effect prohibiting such discrimination or pertaining to equal employment opportunities, and shall undertake programs of affirmative action to ensure that employees and applicants for employment are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) Contractor shall request each employment agency, labor union and authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish it with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status and that such agency, union or representative will cooperate in the implementation of contractor's obligations hereunder.

(c) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, religion, national origin, ancestry, sex, age, disability or marital status.

(d) Contractor shall comply with all of the provisions of the Civil Rights Law of the State of New York and Sections 291-299 of the Executive Law of the State of New York, shall upon reasonable notice furnish all information and reports deemed reasonably necessary by Landlord and shall permit access to its relevant books, records and accounts for the purpose of monitoring compliance with the Civil Rights Law and such sections of the Executive Law.

(e) Contractor shall include in all agreements with subcontractors the foregoing provisions of Sections (a) through (d) in such a manner that said provisions shall be binding upon the subcontractor and enforceable by Contractor, Tenant and Landlord. Contractor shall take such action as may be necessary to enforce the foregoing provisions. Contractor shall promptly notify Tenant and Landlord of any litigation commenced by or against it arising out of the application or enforcement of these provisions, and Tenant and Landlord may intervene in any such litigation.

Section 40.03. Tenant has reviewed and participated in the development of the Affirmative Action Program, a copy of which is annexed hereto as Exhibit K. Tenant shall, and shall cause each of its agents, contractors and subcontractors to, promptly and diligently carry out its obligations under such Program in accordance with the terms thereof. If Tenant fails to comply with its obligations under this Section 40.03 or under Exhibit K, Landlord's sole remedies shall be as provided in Exhibit K, provided that any amounts payable by Tenant to Landlord under Section 9 of Exhibit K shall constitute Rental hereunder.

Section 40.04. Tenant has reviewed the Affirmative Fair Marketing Program, a copy of which is annexed hereto as Exhibit L, and Tenant shall, and shall use its commercially reasonable best efforts to cause each of its agents to, comply with all of the terms and provisions of such Program. If Tenant fails to comply with its obligations under Section 40.04 or under Exhibit L, Landlord's sole remedies shall be as provided in Exhibit L.

ARTICLE 41

MISCELLANEOUS

Section 41.01. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 41.02. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 41.03. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 41.04. Depository may pay to itself out of the monies held by Depository pursuant to this Lease its reasonable charges for services rendered hereunder. Tenant shall pay Depository any additional charges for such services.

Section 41.05. If more than one entity is named as or becomes Tenant hereunder, Landlord may require the signatures of all such entities in connection with any notice to be given

or action to be taken by Tenant hereunder except to the extent that any such entity shall designate another such entity as its attorney-in-fact to act on its behalf, which designation shall be effective until receipt by Landlord of notice of its revocation. Each entity named as Tenant shall be fully liable for all of Tenant's obligations hereunder. Any notice by Landlord to any entity named as Tenant shall be sufficient and shall have the same force and effect as though given to all parties named as Tenant. If all such parties designate in writing one entity to receive copies of all notices, Landlord agrees to send copies of all notices to that entity.

Section 41.06. (a) The liability of Landlord or of any Person who has at any time acted as Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, including, without limitation, the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes of action or other interests, sums or receivables appurtenant to the Premises. Neither Landlord nor any such Person nor any of the members, directors, officers, employees, agents or servants of either shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder.

(b) The liability of Tenant hereunder for damages or otherwise shall be limited to the property and assets of Tenant, including, its interest in the Premises. Neither the Tenant nor any of the members, directors, officers, shareholders, partners, managers principals or joint venturers (disclosed or undisclosed), employees, agents or servants of Tenant or its partners, members or shareholders (collectively, "Excluded Persons") shall have any liability (personal or otherwise) hereunder beyond the property or assets of the Tenant, and no property or asset of any Excluded Persons shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies hereunder.

(c) Nothing contained in this Section 41.06 shall, however, (i) modify, qualify, or affect in any manner whatsoever Landlord's ability to draw upon the Letter of Credit (or to enjoy such other collateral, guaranty or security as shall then be held by Landlord in lieu thereof), or the personal recourse undertakings, obligations or liabilities of any person, party or entity under any guaranty of payment, other guaranty or indemnification agreement hereafter executed and delivered to Landlord in connection with this Lease, or the transactions contemplated hereby and thereby or (ii) constitute a waiver of the right of the Landlord to enforce the liability and obligation of Tenant and, if Tenant is a general partnership or a limited partnership, the designated general partner(s) therein (but not any other Excluded Persons), by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Landlord (including reasonable attorneys' fees and costs reasonably incurred) arising out of or in connection with any of the following:

(A) fraud or intentional misrepresentation by Tenant or any guarantor in connection with this Lease;

(B) the willful misconduct of any guarantor;

(C) the breach of any provision of Section 14.01 (only insofar as such breach pertains to compliance with Environmental Statutes) or Section 19.01(i);

(D) the misapplication or conversion by Tenant of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Premises, the Building or any portion thereof, (B) any awards or other amounts received in connection with the condemnation of the Premises, the Building or any portion thereof, or (C) any Rents following an Event of Default;

(E) any security deposits collected by Tenant with respect to the Premises or the Building which are not delivered to Landlord upon an eviction or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of this Lease;

(F) the intentional commission of waste, or the willful failure to stop the commission of waste, by Tenant;

(G) any representation or warranty of Tenant or of any guarantor made in any financial certificate, report, statement or other financial information furnished in connection with this Lease, or any guaranty or any other documents, fraudulently misrepresenting in any material respect the financial condition of Tenant or of any guarantor when made;

(H) any part of the Premises, Building or any interest of any nature whatsoever therein (whether legal or beneficial or whether held directly or indirectly) or any interest of any nature whatsoever in Tenant (whether held directly or indirectly) being in any manner further encumbered, sold, transferred, assigned or conveyed in contravention of the provisions of this Lease; or

(I) any damage or destruction of the Premises or any portion thereof due to fire or other casualty to the extent not covered by insurance required under this Lease, but only to the extent same would have been covered by insurance if Tenant had obtained and maintained the insurance required under this Lease.

Furthermore, notwithstanding anything to the contrary in this Lease, with respect to (i) any voluntary or involuntary bankruptcy petition filing, (ii) application for a custodian, receiver, trustee or examiner, or (iii) assignment for the benefit of creditors (whether any such action described in clauses (i) through (iii) is made with respect to Tenant or any other party), Landlord shall not be deemed to have waived any right which Landlord may have under Section 506(a), 506(b), 111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for payment in full of any amounts owing under this Lease or to require that any guaranty securing the obligations of Tenant hereunder, shall continue to secure such obligations in accordance with the terms of this Lease, or any such guaranty.

Section 41.07. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee or leasehold estate in the Premises or any part thereof by reason of the fact that the leasehold estate created by this Lease, or any interest therein, may be held, directly or indirectly, by or for the account of any Person who shall own such fee estate or Landlord's leasehold interest in the Premises or any interest in such fee or leasehold estate, and no such merger shall occur until and unless all Persons at the time having an interest in such fee or leasehold estate and all Persons (including all Mortgagees) having an interest in the leasehold estate created by this Lease and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

Section 41.08. Tenant shall store all refuse from the Premises and recycled material off the streets in an enclosed area on the Premises, and in a manner consistent with the provisions of this Section 41.08 and otherwise in a manner reasonably satisfactory to Landlord and in accordance with the requirements of municipal and/or private sanitation services serving the Premises. Tenant shall store all perishable refuse from the Premises in a refrigerated enclosure. In addition, at Landlord request, Tenant shall from time to time deliver to Landlord, for its reasonable approval, a detailed plan indicating the means by which refuse shall be stored at and removed from the Premises. Tenant shall at all times comply with such approved plan.

Section 41.09. Each of the parties represents to the other that it has not dealt with any broker, finder or like entity in connection with this lease transaction. If any claim is made by any Person who shall claim to have acted or dealt with Tenant or Landlord in connection with this transaction, Tenant or Landlord as the case may be, will pay the brokerage commission, fee or other compensation to which such Person is entitled, shall indemnify and hold harmless the other party hereto against any claim asserted by such Person for any such brokerage commission, fee or other compensation and shall reimburse such other party for any costs or expenses including, without limitation, reasonable attorneys' fees and disbursements, incurred by such other party in defending itself against claims made against it for any such brokerage commission, fee or other compensation.

Section 41.10. This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 41.11. This Lease shall be governed by and construed in accordance with the laws of the State of New York.

Section 41.12. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 41.13. All references in this Lease to "Articles" or "Sections" shall refer to the designated Article(s) or Section(s), as the case may be, of this Lease.

Section 41.14. All of Tenant's right, title and interest in all plans and drawings required to be furnished by Tenant to Landlord under this Lease, including, without limitation,

the Schematics, the Design Development Plans and the Construction Documents, and in any and all other plans, drawings, specifications or models prepared in connection with construction at the Premises, any Restoration or Capital Improvement shall become the sole and absolute property of Landlord upon the Expiration Date or any earlier termination of this Lease, subject to the rights of any Mortgagee with respect thereto which Mortgagee enters into a new lease with Landlord pursuant to Section 10.11 hereof, provided, that such new lease provides that if it is terminated, Mortgagee, as tenant thereunder, shall comply with this Section 41.14. Tenant shall deliver all such documents to Landlord promptly upon the Expiration Date or any earlier termination of this Lease. Tenant's obligation under this Section 41.14 shall survive the Expiration Date.

Section 41.15. All references in this Lease to "licensed professional engineer", "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the State of New York. All references in this Lease to "rentable area" or "rental square feet" shall be determined in accordance with the Standard Method of Floor Measurement for Office Buildings, as recommended by the Real Estate Board of New York, Inc., as such recommendation exists on the date hereof. Any dispute as to such determination shall be resolved by arbitration pursuant to Article 36.

Section 41.16. If BPCA or any successor to its interest hereunder ceases to have any interest in the Premises as lessee under the Master Lease or there is at any time or from time to time any sale or sales or disposition or dispositions or transfer or transfers of Landlord's interest in the Premises as lessee under the Master Lease, the seller or transferor shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such sale or transfer relative to the interest sold or transferred, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the lessee's interest in the Premises under the Master Lease, including, without limitation, the purchaser or transferee in any such sale, disposition or transfer, and any fee owner of the Premises upon termination of the Master Lease, that, subject to the provisions of Section 41.06, such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder accruing from and after the date of such acquisition, sale or transfer.

Section 41.17. Except as otherwise specifically provided herein, if the Tenant named herein or any successor to its interest hereunder ceases to have any interest in the Premises or there is at any time or from time to time any valid sale or sales or disposition or dispositions or transfer or transfers of the Tenant's or any successor's entire interest in the Premises in accordance with the provisions of Article 10, the Tenant named herein or any such successor, as the case may be, shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed on or after the date of such sale or transfer, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns the Tenant's interest in the Premises under this Lease, including, without limitation, the purchaser or

transferee in any such sale, disposition or transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Tenant hereunder to be performed from and after the date of such acquisition, sale or transfer.

Section 41.18. Landlord shall not enter into or cause there to be entered into any amendment, modification or supplement to the Master Lease, Master Development Plan, Settlement Agreement, or Design Guidelines which (a) increases, decreases or materially alters or otherwise materially affects Tenant's rights or obligations under this Lease, (b) limits the permitted uses of the Premises or the Civic Facilities, (c) limits Tenant's rights under this Lease to dispose of, or assign its interest in, the Premises or, (d) decreases or alters the rights of a Mortgagee under this Lease, unless the same is consented to by Tenant (or, in the case of (d), by such Mortgagee) or is made subject and subordinate to this Lease and such rights of such Mortgagee. In the event Landlord shall enter into or cause to be entered into an amendment, modification or supplement to the Master Lease, Master Development Plan, Settlement Agreement, or Design Guidelines which is not in conformity with this Section 41.18, Tenant shall not be obligated to comply with the provisions of such amendment, modification or supplement which do not so conform and the same shall have no force or effect with respect to Tenant or any Mortgagee. Notwithstanding anything herein contained to the contrary, neither Tenant nor any Mortgagee shall have any right to approve any amendment, modification or supplement to the Master Lease, Master Development Plan, Settlement Agreement, or Design Guidelines which does not affect the Premises or Tenant's obligations under this Lease.

Section 41.19. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make Landlord in any way responsible for the debts or losses of Tenant.

Section 41.20. To the extent not prohibited by law, Tenant shall have the right to all depreciation deductions, investment tax credits and other similar tax benefits attributable to any construction, alteration, installation, demolition and Restoration performed by Tenant or any Subtenant, or any other occupant of the Building, or any portion thereof, or any tenant-stockholders under a cooperative plan or any Unit Owner or attributable to the ownership of the Building or any portion or part thereof or any Equipment or materials with respect thereto or with respect to any of the portions of the Premises. Landlord, from time to time, shall execute and deliver such instruments as Tenant shall reasonably request in order to effect the provisions of this Section 41.20, and Tenant shall pay Landlord's reasonable costs and expenses thereof. Landlord makes no representations as to the availability of any such deductions, credits or tax benefits.

Section 41.21. Whenever Landlord shall have the right to approve the architect, engineer or lawyer to be employed by Tenant, any architect, engineer or lawyer so approved by Landlord at any time during the Term shall be deemed to be acceptable to Landlord for employment by Tenant at any time thereafter, unless Landlord shall have good cause for refusing to allow the continued employment of such consultant. Whenever Tenant is required to obtain Landlord's approval of an architect, engineer or lawyer, Tenant shall notify Landlord if it intends to employ an architect, engineer or lawyer previously approved. In the event that Landlord shall

refuse to approve the continued employment of such consultant, it shall so notify Tenant, specifying the reason therefor.

Section 41.22. Tenant shall have the right to use the name "Battery Park City" in any advertising and promotional materials in connection with the leasing of the Building or the operation of the Building.

Section 41.23. Landlord, upon request by Tenant and at no cost or expense to Landlord, shall cooperate with any effort by Tenant to establish that, by reason of ownership of the Building and Equipment by Landlord or involvement of Landlord in the project, no sales or compensating use tax is payable in respect of materials incorporated (or to be incorporated) in the Building, Equipment purchased or leased for use in the Premises and for use off-site in support of Tenant's operations at the Premises and the maintenance and upgrade of Equipment. Tenant shall promptly reimburse Landlord for all reasonable costs or expenses which Landlord may sustain or incur while acting pursuant to this Section 41.23.

Section 41.24 Until the earlier of (a) the next succeeding July 1 from the end of the Lease Year 10 or (b) the date on which a separate tax lot designation is obtained for the Hotel Portion, Landlord and Tenant shall cooperate to obtain annually separate, undivided tax assessments for the Hotel Portion and the Residential Portion (including a separate assessment for a pro-rata portion of the Land) and such assessments shall be the basis for calculating Taxes under Section 3.02 hereof and Schedule 1.

Section 41.25. (a) Tenant shall use its reasonable efforts to cause Ritz-Carlton to enter into an amended Hotel Operator Management Agreement and the related documents referred to in Exhibit D (including the memorandum of the Hotel Operator Management Agreement for recording purposes) (collectively, the "Ritz-Carlton Documents") or an amendment to such Ritz-Carlton Documents or to enter an agreement directly with Landlord in its capacity of Hotel Unit Sublessor (which agreement shall be satisfactory to Landlord in its sole and absolute discretion) which reflects in a manner reasonably satisfactory to Landlord the modifications required by that certain memorandum dated the date hereof and attached hereto as part of Exhibit D (generically, the "Hotel Operator Management Agreement Modification"). Tenant shall use its reasonable efforts to cause Ritz-Carlton to enter into such amendments or agreements on or before July 15, 2000, and in no event shall any memorandum of any of the Ritz-Carlton Documents be filed or recorded by the Ritz-Carlton or Tenant hereunder (except if permitted by Section 41.25(b))unless such agreements or amendments are entered into and Landlord shall have approved the same in writing (which approval or dissaproval shall not be unreasonably delayed). If, in connection with such amendments or agreements, the Hotel Operator requests reasonable modifications to such Exhibit D as a condition to entering into such amendments or agreements Landlord shall not unreasonably withhold or delay its consent to such modifications, provided that such modifications (a) do not increase the obligation of Landlord under this Lease or adversely affect the leasehold created by this Lease and the Landlord's rights hereunder, (b) do not affect the current quality of service and furnishing standards set forth in Exhibit D (except for modifications thereof permitted in Section 23.05(a)), including, the amount of the FF&E

Reserve and (c) are not inconsistent with the terms and provisions of this Lease. No provision hereof shall be deemed a consent by Landlord to the provisions of the Hotel Operator Management Agreement or the Condominium Sub-Management Agreement attached as part of Exhibit D or the waiver of any provisions of this Lease to the extent any provisions of such agreements are inconsistent with the terms hereof.

(b) After the Condominium Date, a memorandum for recording purposes of any of the Ritz-Carlton Documents may not be filed or recorded, unless and until (x) the Hotel Operator Management Agreement Modification has occurred, or (y) in the event that the Hotel Operator Management Agreement Modification shall not have occurred, Landlord shall have received (1) an opinion of reputable counsel reasonably satisfactory to Landlord (Landlord hereby approves Battle Fowler LLP), such opinion to be in form and substance reasonably satisfactory to Landlord and (2) title insurance coverage (in such amount as Landlord shall specify), in each case at the cost and expense of Hotel Unit Sublessee, confirming and insuring, as applicable, that the Ritz-Carlton Documents are subject and subordinate in all respects to the rights of Landlord under this Lease, the Hotel Unit Lease and the Hotel Unit Sublease, and with respect to the opinion only, the termination of the Hotel Unit Sublease shall give the Hotel Unit Sublessor the right to terminate the Hotel Operator Management Agreement or (z) Landlord and Hotel Operator shall have entered into an agreement satisfactory to Landlord in its sole and absolute discretion permitting the recording of a memorandum or memoranda of the Ritz-Carlton Documents. Notwithstanding anything to the contrary contained herein, any memorandum of Hotel Operator Management Agreement expressly permitted hereunder shall be filed and recorded solely against the Hotel Unit Sublessee's interest under the Hotel Unit Sublease.

Section 41.26 During the period commencing on the Commencement Date and ending on the Hotel Opening Date, pursuant to a separate letter agreement dated of even date herewith, Tenant shall engage a Minority Group Member (as defined in the Affirmative Action Program in Exhibit K) intern to assist in the development of the Building who shall receive a salary and benefit package commensurate with the level generally provided to graduate school interns in the New York Metropolitan area. The intern shall be selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

Section 41.27 Any documents attached hereto as Exhibits which are to be executed and delivered after the date hereof shall at the time of their execution pursuant to this Lease be appropriately dated, all blanks or bracketed text shall be appropriately filled in or completed and any outdated or incorrect factual information shall be appropriately corrected consistent with the intent of such documents.

ARTICLE 42

LETTERS OF CREDIT

Section 42.01.

(a) Letter of Credit. In accordance with the provisions of Section 11.13 hereof, Tenant may deliver to Landlord the Design/Construction Period Letter of Credit (as may be increased or supplemented by an additional Design/Construction Period Letter of Credit as provided in Section 11.01) (the Design/Construction Period Letter of Credit, the supplemental Design/Construction Period Letter of Credit, if applicable, and any Replacement Letter of Credit, as hereinafter defined, shall be collectively referred to herein as the "Letter of Credit").

(b) Presentment of Sight Draft(s) Under Letter of Credit. If Tenant (i) fails to perform any of Tenant's obligations under this Section 42.01 in strict compliance with the requirements of this Section 42.01 or (ii) violates any prohibition contained in this Section 42.01, then Landlord shall have the right (in addition to all other rights and remedies provided in this Lease and without Landlord's exercise of such right being deemed a waiver or a cure of Tenant's failure to perform), without notice to Tenant, to present for immediate payment sight draft(s) in any amount Landlord elects up to the full amount then available under such Letter of Credit and to apply the proceeds thereof in the manner provided in this Lease for the application of the proceeds of such Letter of Credit. Any proceeds not so applied shall be held by Landlord or invested and reinvested in United States government securities maturing in no more than ninety (90) days or in federally insured money market accounts. Any interest earned thereon shall constitute proceeds of such Letter of Credit and shall be applied in the same manner as the proceeds of such Letter of Credit are applied. Landlord's obligations with respect to the presentment of any Letter of Credit, the return of any Letter of Credit or any proceeds thereof shall be governed by the applicable provisions of this Lease.

(c) Purpose of Letter of Credit. Tenant acknowledges that the purpose of each Letter of Credit is to provide sure and certain security for Landlord and that Landlord has accepted each Letter of Credit for that purpose, in place of a cash deposit in the same amount, with the understanding that each Letter of Credit is to be the functional equivalent of a cash deposit. To further assure that each Letter of Credit achieves its intended purpose, the parties agree as set forth below. Tenant acknowledges that the waivers in this Section 42.01(c) constitute a material portion of the inducement to Landlord to accept each Letter of Credit under the terms and conditions of this Section 42.01, and that Landlord has agreed to accept each Letter of Credit in reliance on Tenant's waivers in this Section 42.01. Any breach by Tenant of the provisions of this Section 42.01(c) shall constitute an Event of Default hereunder.

(i) Waiver of Certain Relief. Tenant unconditionally and irrevocably waives (and as an independent covenant hereunder, covenants not to assert) any right to claim or obtain any of the following relief in connection with each Letter of Credit:

(A) A temporary restraining order, temporary injunction, permanent injunction, or other order that would prevent, restrain or restrict the presentment of sight draft(s) drawn under any Letter of Credit or the Issuer's honoring or payment of sight draft(s); or

(B) Any attachment, garnishment, or levy in any manner upon either the proceeds of any Letter of Credit or the obligations of the Issuer (either before or after the presentment to the Issuer of sight draft(s) drawn under such Letter of Credit) based on any theory whatever.

(ii) Remedy for Improper Drafts. Tenant's sole remedy in connection with the improper presentment or payment of sight drafts drawn under any Letter of Credit shall be the right to obtain from Landlord a refund of the amount of any sight draft(s) that were improperly presented or the proceeds of which were misapplied, together with interest at the Involuntary Rate and reasonable attorneys' fees, provided that at the time of such refund, Tenant increases the amount of such Letter of Credit to the amount (if any) then required under the applicable provisions of this Lease. Tenant acknowledges that the presentment of sight drafts drawn under any Letter of Credit, or the Issuer's payment of sight drafts drawn under such Letter of Credit, could not under any circumstances cause Tenant injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. In the event Tenant shall be entitled to a refund as aforesaid and Landlord shall fail to make such payment within ten (10) days after demand, Tenant shall have the right to deduct the amount thereof together with interest thereon at the Involuntary Rate from the next installment(s) of Base Rent.

(iii) Notices to Issuer. Tenant shall not request or instruct the Issuer of any Letter of Credit to refrain from paying sight draft(s) drawn under such Letter of Credit.

(d) Assignment. If either Landlord or Tenant desires to assign its rights and obligations under this Lease in compliance with the provisions of this Lease, then the parties to this Lease shall, at the assignor's request, cooperate so that concurrently with the effectiveness of such assignment, Tenant shall deliver to Landlord a Replacement Letter of Credit as described in Section 42.01 or an appropriate amendment to such Letter of Credit, in either case identifying as applicant and beneficiary the appropriate parties after the assignment becomes effective. The assignor shall pay the Issuer's fees for issuing such Replacement Letter of Credit or amendment.

(e) Replacement of Letter of Credit. Tenant shall replace any Letter of Credit with a replacement letter of credit (the "Replacement Letter of Credit") (i) at least thirty (30) days prior to the expiry date of a Letter of Credit which is expiring or (ii) within ten (10) days after the date on which the Issuer delivers any notice purporting to terminate or to decline to renew such Letter of Credit, or expressing any intention to do either of the foregoing. After Tenant delivers to Landlord a Replacement Letter of Credit complying with the provisions of this

Lease, Landlord shall deliver in accordance with Tenant's reasonable instructions such Letter of Credit being replaced, provided that at such time no sight draft(s) under such Letter of Credit are provided in this Lease, any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced, but in any event:

(i) Amount. The amount of each Replacement Letter of Credit shall equal or exceed the amount of such Letter of Credit at the time of replacement.

(ii) Dates. The date of the Replacement Letter of Credit shall be its date of is issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be exactly one (1) year later than the expiry date of the Letter of Credit being replaced except in the case of the last Lease Year in which case the expiry date shall be the date of expiration of the Lease.

(iii) Issuer. Each Letter of Credit shall be issued or confirmed, within the meaning of New York Uniform Commercial Code Section 5-103(1)(f), in its entire amount, by a bank reasonably satisfactory to Landlord that is a member of the New York Clearing House Association or that has an office in New York where sight draft(s) may be drawn under such Letter of Credit and honored on a same-day basis and has assets in excess of Seven Billion, Five Hundred Million Dollars ($7,500,000,000) and a net worth in excess of Three Hundred Million Dollars ($300,000,000). The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the Borough of Manhattan, City of New York.

ARTICLE 43

CONDOMINIUM OWNERSHIP

Section 43.01. Introduction.

(a) In connection with the execution of this Lease, Tenant has requested that Landlord permit the submission of Tenant's leasehold estate in the Premises under this Lease to the condominium form of ownership pursuant to the Condominium Act, and in order to better facilitate the sale of Residential Units pursuant to the Condominium Plan, that Landlord agree to limit its remedies under this Lease from and after the Condominium Date in certain respects, including the right to terminate this Lease and the Term hereof (except in certain instances specifically set forth herein).

(b) Landlord has agreed to make such accommodations to the Tenant on the terms set forth herein. The provisions of this Article 43 set out the terms and provisions pursuant to which Tenant is permitted to convert its leasehold estate hereunder to such condominium form of ownership and pursuant to which the Building shall be operated from and after the Condominium Date during the balance of the Term.

(c) In order to implement the parties' understanding and agreement concerning the remedies of Landlord with respect to the Hotel Unit after the Condominium Date, Landlord and Tenant shall, effective as of the Condominium Date, enter into the Hotel Unit Lease and the Hotel Unit Sublease pursuant to which Tenant, as the Hotel Unit Sublessee under the Hotel Unit Sublease will sublease the Hotel Unit, and perform certain of the obligations of Tenant under this Lease with respect to the Hotel Unit, the Public Amenity Core and Shell and the Public Open Space and certain other obligations.

(d) The provisions of this Article 43 provide that the Tenant under this Lease shall, from and after the Condominium Date, be the Condominium Board, and further set out (i) the conditions to be satisfied by Tenant in order to effect a conversion of its leasehold estate hereunder to the condominium form of ownership under the Condominium Act and the obligation of Tenant with respect thereto, (ii) the allocation of liabilities and obligations under this Lease among the Condominium Board, and the Unit Owners, (iii) the remedies under this Lease for Tenant's failure to observe or perform one or more of the terms, conditions, covenants or agreements contained herein, (iv) the application of the provisions of this Lease to the Premises and Tenant from and after the Condominium Date, and (v) various other related provisions.

(e) This Lease shall, after the Condominium Date remain in full force and effect, provided that to the extent that, after the Condominium Date, any of the provisions of this Article 43 conflict with the other provisions of this Lease, the terms and provisions of this Article 43 shall prevail.

Section 43.02. Submission of Tenant's Leasehold Estate to Condominium Act.

(a) Subject to the satisfaction of the Condominium Conditions, Tenant shall have the right, at Tenant's election, to submit Tenant's leasehold estate in the Premises hereunder to the provisions of the Condominium Act, and otherwise in accordance with the Initial Condominium Documents and the terms of this Lease. After such submission, no withdrawal of Tenant's leasehold interest from the provisions of the Condominium Act shall be permitted at any time for any reason without Landlord's prior consent, which consent Landlord may withhold in its sole discretion.

(b)(i) If Tenant desires to amend, modify or supplement, from time to time, the Condominium Documents (including the Initial Condominium Documents), Tenant shall submit such proposed amendment, modification or supplement to Landlord for Landlord's review and determination in advance, that in Landlord's reasonable opinion, such amendment, modification or supplement conforms to the provisions of this Lease and does not differ from the Initial Condominium Documents in any manner that is materially adverse to any rights, interests or obligations of Landlord under this Lease or the terms and provisions of the Hotel Unit Lease and the Hotel Unit Sublease. If Landlord determines in its reasonable opinion that such proposed amendment, modification or supplement so conforms with no such material adverse difference, Landlord shall notify Tenant to that effect within thirty (30) days after Landlord's receipt of such proposed amendment, modification or supplement. If Landlord determines in its reasonable

opinion that such proposed amendment, modification or supplement does not so conform or does differ in any manner that is materially adverse to any rights, interests or obligations of Landlord under this Lease, the Hotel Unit Lease or the Hotel Unit Sublease, Landlord is required to so notify Tenant within such thirty (30) day period, specifying, in reasonable detail, those respects in which such proposed amendment, modification or supplement does not so conform or does differ in any manner that is materially adverse to any rights, interests or obligations of Landlord under this Lease, the Hotel Unit Lease or the Hotel Unit Sublease and Tenant is required to revise such proposed amendment, modification or supplement and resubmit the same to Landlord for Landlord's review and determination in advance as described in this Section 43.02(b). Each review by Landlord of any such revisions to such proposed amendment, modification or supplement must be carried out within fifteen (15) days after Landlord's receipt of such revised proposed amendment, modification or supplement. If Landlord fails to notify Tenant of Landlord's determination within the periods set forth herein, Landlord shall be deemed to have determined that such proposed amendment, modification or supplement or such revised proposed amendment, modification or supplement, as the case may be, does so conform and does not differ in any manner that is materially adverse to any rights, interests or obligations of Landlord under this Lease, the Hotel Unit Lease or the Hotel Unit Sublease.

(ii) Notwithstanding anything to the contrary set forth above, any amendment to the Condominium Plan which solely involves (i) a change in the sales price of a Unit, or (ii) a change in the financial terms offered to prospective purchasers, other than a change in, or a change that affects, any payment required to be made to Landlord or the priority of any payment to be made under this Lease or payment to be made under the Hotel Unit Lease or Hotel Unit Sublease, or (iii) an additional disclosure required by the New York State Department of Law (the "Department of Law") and not concerning any provision of or obligation under this Lease, or (iv) Tenant making changes, alterations or additions to the interior of any Units or combining two or more Residential Units (provided that such changes or combinations are otherwise performed in accordance with this Lease) shall not be required to be submitted to Landlord in advance but within a reasonable time after such amendment is made, a copy thereof is required to be provided to Landlord for Landlord's information and records.

(c) Tenant, and not Landlord, is responsible for assuring that the Condominium Documents (and any amendments, modifications or supplements thereto) conform to the provisions of this Lease, the Hotel Unit Lease and the Hotel Unit Sublease and comply with all applicable Requirements of Governmental Authorities, including, without limitation, the rules and regulations of the Department of Law. Neither Landlord's review of the Initial Condominium Documents, nor Landlord's determination under this Lease at any time concerning the Condominium Documents (or any amendments, modifications or supplements thereto), shall relieve Tenant of Tenant's responsibility for assuring conformity thereof with the provisions of this Lease, the Hotel Unit Lease and the Hotel Unit Sublease and is not, and is not to be construed to be or relied upon by Tenant, the Condominium Board, any Unit Owner, any Mortgagee, any Residential Unit Mortgagee or any other Person as a determination that the Condominium Documents (or any amendments, modifications or supplements thereto) comply with any of the Requirements of Governmental Authorities, including without limitation, the rules and regulations of the Department of Law.

(d) Neither Landlord's review of the Initial Condominium Documents, nor Landlord's determination under this Lease at any time concerning the Condominium Documents (or any amendments, modifications or supplements thereto) is, or is to be construed to be or relied upon by Tenant, the Condominium Board, any Unit Owner, any Mortgagee, any Residential Unit Mortgagee or any other Person, as a determination that Landlord has approved the offering of Units pursuant to the Condominium Plan or has participated in such offering.

(e) Neither the recording by Tenant of the Declaration, nor Landlord's execution of the Declaration or any other actions, as provided in Section 43.03(a), is, or is to be construed to be, a consent by Landlord to, or an approval by Landlord of, the contents of the Declaration or other Condominium Documents and shall not in any way cause Landlord to be deemed a "sponsor" of the Condominium Plan or the Declaration. The parties hereto acknowledge and agree that the terms, provisions and conditions of the Condominium Documents shall at all time be subject and subordinate to the terms, provisions and conditions of this Lease, and no approval (or deemed approval) or review of Landlord of the Condominium Documents (including the Initial Condominium Documents or any amendment, modification or supplement thereto) shall be considered as subordinating any provision of this Lease to the Condominium Documents or any amendment, modification or supplement thereto. In no event shall Landlord be required to perform any act under Section 43.03(a) or otherwise that has the effect of subordinating this Lease, or any provision hereof, to the rights of the Condominium Board or any other Board, any Unit Owner, any Mortgagee, any Residential Unit Mortgagee or any other Person, and no recording of the Declaration nor any determination, review or other act by Landlord under or concerning this Lease will cause or be construed as any such subordination.

(f) The Condominium Documents shall, in addition to the other requirements of this Lease, at all times during the Term be required at a minimum to include provisions to the effect that unless otherwise approved by Landlord in writing: (i) the Condominium Board shall be the Tenant under this Lease from and after the Condominium Date, (ii) the Condominium Board and each of the other Boards and all Unit Owners are required to comply with all applicable provisions of this Lease, (iii) except as otherwise provided in Section 43.05(b)(i), each Unit Owner is required to pay to the Condominium Board as part of Common Charges all applicable Rent which is payable on a monthly or other periodic basis throughout the Term of this Lease (including, for example, Base Rent, PILOT, Hotel Percentage Rent and/or Civic Facilities Payments), which, when so paid, if requested by Landlord, is required to be segregated from other amounts payable to the Condominium Board and held in trust for the benefit of and paid to Landlord in accordance with this Lease; (iv) the first monies paid by a Unit Owner to the Condominium Board as or on account of Common Charges at any time shall be treated as and applied to the payment of Rent that is due and payable at such time by such Unit Owner; (v) no less than a one percent undivided interest in the Public Amenity Unit is allocated to and is to be owned by Landlord on the Condominium Date; (vi) the Condominium Board shall assess as Common Charges any Rent due under this Lease which is not referred to in clause (iii) above, and which has not been paid for 30 days, unless the payment thereof is provided for from other sources, and the lien of the Condominium Board for Common Charges shall extend to such Rent, including any Landlord Default Costs and any Landlord's Condominium Costs so assessed; (vii) the only Units permitted under the Condominium Documents shall be the Residential Units,

the Hotel Unit and the Public Amenity Unit unless otherwise consented to by Landlord, which consent is permitted to be withheld by Landlord in its sole discretion; (viii) in the event of a Condominium Default, Landlord is permitted to replace the members of the Condominium Board and/or any other Board that has failed to remedy same, and each member of any Board must sign, as a condition of serving on such Board, a resignation in the form of Exhibit M that will be assigned and delivered to Landlord for purposes of Landlord's exercise of its right to replace any Board member; and (ix) any PILOT attributable to the Public Amenity Unit, if any, shall be borne and paid by the Hotel Unit Owner and not by the Unit Owner of the Public Amenity Unit as provided in Section 3.02 of this Lease, (x) the Condominium Board shall be liable to Landlord for any failure to comply with the Condominium Covenants; provided, however, that no member of any Board shall have any personal liability as the result of a default by such Board in the performance of any Condominium Covenants, (xi) the method for allocation of Common Charges among the Unit Owners shall be as set forth in the Initial Condominium Documents, (xii) the right of first refusal set forth in the Condominium Documents does not apply to any transfer of any Unit to or from Landlord or in connection with foreclosure by the Landlord of the lien for Common Charges, and (xiii) the Condominium Board's lien for Common Charges is assigned to Landlord as security for the payment of Rent.

Section 43.03. Conditions to Recording Declaration and Closing of the Initial Unit Transfer.

(a) Upon the satisfaction of the Condominium Conditions, as set forth in Section 43.03(b), and not otherwise, Tenant may submit Tenant's leasehold estate in the Premises under this Lease to the provisions of the Condominium Act by recording, in accordance with the requirements of the Condominium Act, the Declaration included as part of the Initial Condominium Documents. Provided that the Condominium Conditions hereinafter set forth have been satisfied by Tenant, Landlord shall execute the Declaration or take such other actions as may be required by applicable Requirements in order for Tenant to record the Declaration.

(b) Tenant shall not be permitted to record the Declaration and effect the Initial Unit Transfer unless and until all of the following conditions have been satisfied at the time of the filing of the Declaration and at the time of the First Unit Transfer (the "Condominium Conditions"), provided that the conditions described in clauses (iii), (v), (vii), (viii), (ix), (xi), (xii) and (xiv) of this Section 43.03(b) shall be required to be satisfied as a condition to the Initial Unit Transfer but not before the recording of the Declaration:

(i) The Condominium Plan has been accepted for filing by the Department of Law and a correct and complete copy of the letter issued by the Department of Law evidencing such acceptance has been delivered to Landlord;

(ii) The Initial Condominium Documents have not been amended, modified or supplemented unless each such amendment, modification or supplement has been made in accordance with and conforms to the provisions of this Lease, including the provisions of Section 43.02(b);

(iii) The Condominium Board and a Residential Managing Agent have entered into a Condominium Management Agreement, a correct and complete copy thereof has been delivered to Landlord, the same is in full force and effect, and Landlord is a named third party beneficiary thereunder and the Condominium Board, the Residential Managing Agent and Landlord shall have executed and delivered a Management Agreement Subordination Recognition and Attornment Agreement in the form of Exhibit N annexed hereto (the "Residential Management Subordination and Attornment Agreement");

(iv) The Condominium Plan has been declared effective in accordance with its terms and a correct and complete copy of the letter issued by the Department of Law evidencing acceptance of an amendment declaring the Condominium Plan effective has been delivered to Landlord;

(v) The Hotel Unit Lease and Hotel Unit Sublease (and memoranda thereof) have been executed and delivered by each of the parties thereto and released from the Hotel Unit Escrow Agreement and in the event that the Declarant is a Person other than the initial named Tenant hereunder, such Declarant (as the initial Hotel Unit Owner and the Hotel Unit Sublessee) shall have executed and delivered an instrument or instruments in recordable form and otherwise in form and substance satisfactory to Landlord agreeing (for itself and its successors and assigns) to be bound by all of the terms of the Hotel Unit Lease, Hotel Unit Sublease and the memoranda thereof) held under the Hotel Unit Escrow Agreement, and shall have executed and delivered any forms necessary to record the memoranda of the Hotel Unit Lease and the Hotel Unit Sublease;

(vi) No Default or Event of Default has occurred that has not been cured upon the date the Declaration shall be recorded;

(vii) Tenant shall have delivered to Landlord a certificate from the Architect in the form attached to the Construction Completion Escrow Agreement, certifying that (x) all construction performed to date has been completed in accordance with the Construction Documents, the Master Development Plan and the Design Guidelines and (y) that the remaining cost to effect the Completion of the Building (excepting the installation of movable FF&E not procured at such time, Hotel initial working capital and hotel pre-opening expenses, the cost of Hotel operating permits and the cost to complete the Public Amenity Space other than costs to effect the Completion of the Public Amenity Core and Shell) does not exceed fifteen million dollars ($15,000,000);

(viii) a Certificate of Occupancy for no less than thirty-three percent (33%) of the Residential Units (including the Unit that is the subject of the Initial Unit Transfer) has been issued and has not been suspended or revoked and a correct and complete copy of such Certificate of Occupancy has been delivered to Landlord;

(ix) Declarant has complied with its obligations under Section 43.11 concerning delivery to Landlord of cash in the amount required under Section 43.11;

(x) Landlord, Declarant and Battle Fowler LLP shall have executed and delivered that certain Escrow Agreement (the "Construction Completion Escrow Agreement") in substantially the form of Exhibit O annexed hereto and funded the amount thereunder;

(xi) Declarant has delivered to Landlord its certification that the conditions contained in this Section 43.03(b) are satisfied;

(xii) All conditions and requirements under Section 43.07 with respect to the Unit affected by the Initial Unit Transfer have been (or will, at the closing of the Initial Unit Transfer, be) satisfied;

(xiii) Unless (x) Landlord and Hotel Operator shall have entered into a written agreement satisfactory to Landlord in its sole and absolute discretion permitting the recording of a memorandum or memoranda of the Ritz-Carlton Documents, or (y) the Hotel Operator Management Agreement Modification shall have occurred, no memorandum or any similar notice for recording purposes of any of the Ritz-Carlton Documents shall have been filed or recorded (which has not been withdrawn from record) by Tenant, Declarant, Hotel Operator or any other Person, and Landlord shall have received an updated title report as of the date of the filing of the Declaration and the Initial Unit Transfer.

(xiv) No Default or Event of Default has occurred that has not been cured upon the date of the Initial Unit Transfer; and

(xv) The Construction Guarantor shall have executed and delivered the Construction Completion Guaranty in substantially the form annexed hereto as Exhibit P, together with a certificate of the CPA certifying that the minimum net worth of the Construction Guarantor meets the requirements of the definition thereof.

(c)(i) In the event that, at any time prior to the recording of the Declaration (i) Landlord makes payment of the Indebtedness, or (ii) New York City exercises its right under that certain Purchase Option dated as of June 6, 1980 between the Urban Development Corporation, BPC Development Corporation, Landlord and New York City, as amended, to repay the Indebtedness, or (iii) Landlord agrees to convey the Premises or assign its right, title and interest as tenant under the Master Lease or as Landlord under this Lease to New York City or any other Person, Landlord shall give Tenant notice thereof within ten (10) Business Days after the occurrence of such event. In such event, the provisions of clause (i) of Section 43.02(b) (as to amendments, modifications or supplements to the Condominium Documents) shall be waived by Landlord as conditions to recording the Declaration, without any waiver of any other provisions of or rights under this Lease. At Tenant's request, Landlord shall (x) execute the Declaration, or take such other actions as are required by applicable Requirements, as provided in Section 43.03(a) and (y) cooperate with Tenant and, if requested by Tenant, cause Master Landlord to cooperate with Tenant, in causing the Declaration to be duly recorded prior to the acquisition of the Project Area by New York City or the consummation of any such conveyance or assignment.

(ii) In no event shall Landlord convey its interest in the Premises or assign its right, title and interest as tenant under the Master Lease or as Landlord under this Lease to New York City or any other Person prior to the recording of the Declaration, unless Landlord has given Tenant at least sixty (60) days' prior notice of such proposed conveyance or assignment.

(d) As of the Condominium Date, provided Tenant has given seven (7) Business Days' prior written notice to Landlord, Landlord shall execute, acknowledge and deliver to Tenant, a statement in writing certifying that the Condominium Conditions have been satisfied (or if any such Condominium Condition has not been satisfied, specifying those Condominium Conditions not so satisfied). In addition, as of the date of the Condominium Date, provided Tenant has given seven (7) Business Days' prior written notice to Landlord, Landlord shall execute, acknowledge and deliver to Tenant and Escrow Agent (as defined in that certain escrow agreement dated as of the date hereof among Landlord, Tenant and Torys), a statement in writing certifying the occurrence of the Condominium Date.

(i) The notice from Tenant to Landlord delivered as aforesaid shall contain the following legend typed in bold, capital letters at the top:

> "IF LANDLORD FAILS TO NOTIFY TENANT THAT THE CONDOMINIUM CONDITIONS (AS DEFINED IN SECTION 43.03(b) OF THE GROUND LEASE) HAVE OR HAVE NOT BEEN SATISFIED WITHIN SEVEN (7) BUSINESS DAYS FOLLOWING DELIVERY OF THIS NOTICE TO LANDLORD, SUCH FAILURE MAY RESULT IN LANDLORD BEING DEEMED TO HAVE DETERMINED THAT SAID CONDOMINIUM CONDITIONS HAVE BEEN SATISFIED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 43.03(b) OF THE GROUND LEASE."

(ii) If Landlord fails to notify Tenant that all of the Condominium Conditions have or have not been satisfied within such seven (7) Business Day period specified in the aforesaid notice, Tenant shall deliver to Landlord a second written notice which shall bear the following legend typed in bold, capital letters at the top:

> "IF LANDLORD FAILS TO NOTIFY TENANT THAT THE CONDOMINIUM CONDITIONS IN SECTION 43.03(b) OF THE GROUND LEASE HAVE OR HAVE NOT BEEN SATISFIED WITHIN THREE (3) BUSINESS DAYS AFTER TENANT'S DELIVERY TO LANDLORD OF THIS WRITTEN NOTICE, LANDLORD SHALL BE DEEMED BY SUCH FAILURE TO HAVE NOTIFIED TENANT THAT THE CONDITIONS IN SECTION 43.03 OF THE GROUND LEASE HAVE BEEN SATISFIED."

(iii) If Landlord does not notify Tenant that the Condominium Conditions have or have not been satisfied, as the case may be, within three (3) Business

Days after delivery to Landlord of such second notice pursuant to clause (ii) above, Landlord shall be deemed to have notified Tenant that the Condominium Conditions have been satisfied.

(iv) In no event shall Landlord be required to deliver any certificate pursuant to this Section 43.03(d), unless at least seven (7) Business Days prior thereto Tenant has delivered to Landlord evidence reasonably satisfactory to Landlord to document the satisfaction of such Condominium Conditions, including, a certification by Declarant that all of the Condominium Conditions contained in Section 43.03(b) are satisfied or shall be satisfied on the date of the Initial Unit Transfer. In addition (x) no such certificate shall release Tenant or any other Person of any of their obligations to Landlord hereunder or waive any of Tenant's obligations or Landlord rights hereunder, and (y) the certification or deemed certification as to matters referred to in clauses (i), (ii), (iv), (vi), (vii), (viii), (xii) and (xiv) of Section 43.03(b) shall be to the best knowledge of Landlord, without independent investigation.

(v) Tenant and Landlord hereby agree that the only effect of the delivery by Landlord or the deemed delivery by Landlord of the certificate referred to in this Section 43.03(d) shall be to waive Landlord's ability to challenge the validity of the filing of the Declaration, and such certificate may, at the Landlord's option, contain such statement.

Section 43.04. The Boards.

(a) The Condominium Documents shall establish the following three (3) Boards to operate the Building and the Condominium after the Condominium Date: (i) the Condominium Board, (ii) the Residential Board and (iii) the Commercial Board. The Residential Board shall be designated by the Residential Unit Owners, the Commercial Board shall be designated by the Hotel Unit Owner (or the Landlord hereunder), and the Condominium Board shall be comprised of three (3) members of the Commercial Board and two (2) members of the Residential Board. The By-laws of the Condominium shall provide that each member of the Condominium Board shall have one vote, and that not more than a majority of the members of any Board shall be required for a quorum of such Board, and all actions of any Board shall be taken by a majority of its members.

(b) (x) From and after the Condominium Date, the Condominium Board shall be deemed the Tenant under this Lease for all purposes hereof and shall be responsible and liable for all obligations of the Tenant hereunder, except that the Condominium Board shall not have any liability or responsibility for Tenant's obligations under the following provisions of this Lease:

(i) The initial obligations of Tenant to effect Completion of the Building in accordance with Article 11;

(ii) The provisions of Section 23.06(a)(ii) related to the construction of the Public Amenity Core and Shell and Section 26.01 related to the construction of the Tenant Civic Facilities;

(iii) Section 23.06; and

(iv) Section 19(a)(x) and (y) (concerning indemnification in respect of construction obligations regarding the initial construction of the Building).

(y) The Condominium Board may delegate to the Residential Board or the Commercial Board such rights or obligations of Tenant as the Condominium Board deems appropriate in its discretion. Notwithstanding the foregoing, if the Condominium Board has delegated any of its rights and obligations to the Residential Board or the Commercial Board, as the case may be, as permitted by this Lease, and a Condominium Default occurs as a result of any act or failure to act of any such Board, such act or failure to act and the resulting Condominium Default shall constitute the act or failure to act by the Condominium Board and shall be deemed to be a Condominium Default of the Condominium Board.

(c) Each Unit Deed for a Residential Unit shall require that the Residential Unit Owner named therein constitute and appoint the Condominium Board as said Unit Owner's true and lawful attorney-in-fact coupled with an interest for the purposes of performing and observing the Condominium Covenants applicable to such Residential Unit, including paying Residential Proportionate Rent, applicable to such Unit Owner's Residential Unit. Each Unit Deed for the Hotel Unit shall require that the Unit Owner named therein constitute and appoint the Condominium Board as said Unit Owner's true and lawful attorney-in-fact coupled with an interest for the purposes of performing and observing the Condominium Covenants applicable to the Hotel Unit.

(d) At the request of Landlord at any reasonable time or times, the Condominium Board shall prepare and deliver to Landlord, within twenty (20) days after any such request, a true and correct listing of the names of all Unit Owners and the Units owned by such Unit Owners and copies of any other documents reasonably requested by Landlord. The Condominium Board shall permit Landlord and Landlord's designee to examine the records and books of account maintained by the Condominium Board or any other Board and any Residential Managing Agent at a location designated by the Condominium Board in New York City.

(e) The Condominium Board shall enforce, at the sole cost and expense of the Residential Unit Owners, the duties and obligations of the Residential Managing Agent under the Condominium Management Agreement, whether or not such duties and obligations are for the primary benefit of the Condominium Board or Landlord. The Residential Managing Agent's failure to perform its duties under the Condominium Management Agreement shall not excuse the Condominium Board from any of its obligations under this Lease.

Section 43.05. Hotel Unit Lease and Hotel Unit Sublease.

(a) Pursuant to the Hotel Unit Escrow Agreement, Landlord and Declarant shall enter into the Hotel Unit Lease in substantially the form of Exhibit Q annexed hereto, and Landlord and Declarant shall enter into the Hotel Unit Sublease in substantially the form of the Exhibit R annexed hereto, pursuant to which, effective on the Condominium Date, the Hotel Unit will be leased by Declarant to Landlord, and in turn, subleased back by the Landlord to Declarant.

(b) The following provisions shall apply with respect to the Hotel Unit Lease and Hotel Unit Sublease, notwithstanding any provisions of this Lease to the contrary:

(i) Rent payments received by Landlord from the Hotel Unit Sublessee pursuant to the Hotel Unit Sublease shall be deemed to be corresponding payments of Rent hereunder and shall discharge the obligation of the Tenant to pay that portion of Rent due hereunder.

(ii) The performance by Hotel Unit Sublessee of any covenant or condition under the Hotel Unit Sublease with respect to the Hotel Unit, Hotel Portion, the Public Amenity Space or the Public Open Space shall constitute performance by Tenant of any corresponding covenant or condition in this Lease.

(iii) Any waiver granted by Hotel Unit Sublessor of any covenant or condition contained in the Hotel Unit Sublease with respect to the Hotel Unit or Public Amenity Space or the Public Open Space shall constitute a waiver of any corresponding covenant or condition contained in this Lease with respect to such Hotel Unit or the Hotel Portion or the Public Amenity Space (if and to the extent relating to an obligation of Hotel Unit Sublessee under the Hotel Unit Sublease), or Public Open Space and any consent or approval granted by Hotel Unit Sublessor under the Hotel Unit Sublease with respect to the Hotel Unit, or the Public Amenity Space or the Public Open Space shall constitute consent or approval under any corresponding provision of this Lease with respect to the Hotel Portion or the Public Open Space or the Public Amenity Space, as the case may be.

(iv) Landlord agrees that the Landlord hereunder and the Hotel Unit Sublessor under the Hotel Unit Sublease shall at all times be the same Person.

(v) Upon termination of the Hotel Unit Sublease, any act or omission by Landlord, as tenant under the Hotel Unit Lease which constitutes a breach or violation or non-compliance with any of the terms or provisions of this Lease shall not constitute a Default by Tenant hereunder.

(c) (i) In the event that at any time after the Condominium Date the Hotel Unit Owner shall be in default in respect of any of its obligations to the Condominium Board under the Condominium Documents or this Lease, the Condominium Board shall give written notice thereof to the Landlord and the Hotel Unit Lessee, and, if such default is of a nature that

would permit the Condominium Board to enforce any lien it may have against the Hotel Unit (including, without limitation, the lien for Common Charges under the Condominium Act and/or the Real Property Law) in respect of such default, such notice from the Condominium Board shall specify such fact and the basis therefor.

(ii) Landlord and the Hotel Unit Lessee shall, at times during the term of the Hotel Unit Sublease, have the right, but not the obligation, to cure any defaults by the Hotel Unit Owner (or the Hotel Unit Sublessee) in the performance of any of their obligations in respect of the Hotel Unit under the Condominium Documents, and the Condominium Board shall accept such performance from Landlord and the Hotel Unit Lessee.

(iii) The parties acknowledge that pursuant to the terms of the Hotel Unit Sublease and during the term thereof, the Hotel Unit Sublessee shall be responsible for the payment of all Common Charges allocable to the Hotel Unit, including, without limitation, Hotel Rent. After the Condominium Date, neither the Condominium Board nor any other Board shall, without the prior written consent of the Landlord and the Hotel Unit Lessee, (x) enforce any lien for Common Charges under the Condominium Act or any other liens under the Condominium Act and/or the Real Property Law with respect to any defaults in the payment of Hotel Rent and (y) shall not enforce any lien for Common Charges or any other liens under the Condominium Act and/or the Real Property Law or otherwise with respect to any amounts not comprising Hotel Rent, unless and until in each case the Landlord and the Hotel Unit Lessee shall have received prior written notice from the Condominium Board of such failure to pay, and the Landlord or the Hotel Unit Lessee shall have failed to remedy such default within ninety (90) days after such written notice is delivered to Landlord and the Hotel Unit Lessee. After such ninety (90) day period, the Condominium Board shall have the right to enforce the lien for Common Charges against the Hotel Unit, provided that (in addition to any rights the Hotel Unit Lessee may have under law) until the foreclosure sale takes place, the Landlord and the Hotel Unit Lessee shall have the right to cure any such default and dismiss any such foreclosure sale proceeding by payment to the Condominium Board of the sum of money representing the Common Charges (other than Hotel Rent) that are in default.

(iv) Any amounts paid or advanced by Landlord or Hotel Unit Lessee to cure any of the defaults referred to in this subsection (c) shall constitute additional rent payable by the Hotel Unit Sublessee to the Hotel Unit Sublessor under the Hotel Unit Sublease. Hotel Unit Lessee shall submit to Hotel Unit Sublessee a statement, in reasonable detail, substantiating the amounts paid or advanced by Landlord or Hotel Unit Lessee.

43.06. Transfers and Mortgaging of Public Amenity Unit.

Without the prior written consent of Landlord, the Public Amenity Unit shall at all times during the Term from and after the Condominium Date be free and clear of any and all liens, mortgages or other security interests securing borrowed money and no liens, mortgages or other encumbrances thereon shall be permitted except for Title Matters, the Condominium Documents, the Hotel Unit Lease, the Hotel Unit Sublease, or liens or encumbrances approved or

created by Landlord, and the Public Amenity Unit may be sold, leased or otherwise transferred only in strict accordance with the provisions of Article 23. In the event that the Public Amenity Unit becomes subject to the Hotel Unit Sublease, the Hotel Unit Sublessee shall have the right to mortgage its leasehold interest thereunder to the same extent as it may mortgage its leasehold interest in the Hotel Unit under the Hotel Unit Sublease.

43.07. Transfers and Mortgaging of the Units.

(a) The provisions of Article 10 of this Lease with respect to the sale, transfer, assignment, leasing, subleasing, pledging, mortgaging or encumbering of any of Tenant's interest under this Lease, including a Transfer, shall apply mutatis mutandis to the sale, transfer, assignment, leasing, subleasing, pledging, mortgaging or encumbering of the Hotel Unit or the change of ownership of any Person who, directly or indirectly, owns the Hotel Unit, and a Mortgagee of the Hotel Unit and the Hotel Unit Sublessee's interest under the Hotel Unit Sublease shall be accorded the same rights and privileges as are set forth in Article 10 for a Mortgagee of Tenant's leasehold interest hereunder prior to the Condominium Date. For purposes hereof, the provisions of Article 10 applicable to the assignment of this Lease shall apply to any transfer or sale of the Hotel Unit. In addition, the Hotel Unit Owner and the Hotel Unit Sublessee shall at all times be the same Person.

(b) In addition to the restrictions applicable to the Hotel Unit pursuant to Section 43.07(a), no interest in any Unit may be sold, assigned, leased, otherwise transferred, mortgaged or otherwise encumbered at any time by Declarant or any Unit Owner (each such transaction is referred to herein as a "Sale") unless the provisions of this Section 43.07 have been complied with by the Unit Owner thereof (including without limitation, Declarant, with respect to Units not previously transferred by Declarant):

(i) Landlord has received all Residential Proportionate Rent (in the case of Residential Units) and Hotel Rent (in the case of the Hotel Unit) pertaining to such Unit that is due and payable as of the date of such Sale and any unpaid Common Charges allocable to such Unit shall have been or will be paid to the Condominium Board at the date of such sale;

(ii) such Sale (other than mortgaging or leasing of such Unit) is effected pursuant to a Unit Deed, a correct and complete copy of which has been delivered to Landlord or an agent on Landlord's behalf;

(iii)(x) in the case of the mortgaging of any Residential Unit, Section 43.08 is complied with, and a correct and complete copy of each of the Residential Unit Mortgage granted by the Unit Owner as mortgagor and of the Residential Unit Mortgagee Subordination and Recognition Agreement, which is binding on and benefits the Residential Unit Mortgagee holding such Residential Unit Mortgage, as executed and delivered by such Residential Unit Mortgagee, has been delivered to Landlord, or an agent on Landlord's behalf, or (y) in the case of the mortgaging of the Hotel Unit, the provisions of Article 10 are complied with, such Mortgagee shall be the same Person as the holder of the leasehold Mortgage on the Hotel Unit Sublessee's

interests under the Hotel Unit Sublease, no default shall have occurred under the Hotel Unit Sublease as a result thereof, and the Mortgagee shall execute and deliver to Landlord the Mortgagee Subordination and Recognition Agreement; and

(iv)(x) in the case of the leasing of any Residential Unit, such leasing is effectuated pursuant to a written lease that does not violate any applicable provisions of this Lease and the Condominium Documents, a correct and complete copy of which has been delivered to Landlord and (y) in the case of the leasing of the Hotel Unit, no leasing or subleasing thereof shall be permitted (except as permitted in the Hotel Unit Lease and the Hotel Unit Sublease).

(c) In addition, as a condition precedent to any Sale, Landlord shall be paid a reasonable fee to compensate it for its administrative expenses in connection with such Sale, as Landlord may determine from time to time (the "Administrative Fee"). During the period ending on the fifth anniversary of the Initial Unit Transfer, the Administrative Fee per any Sale of a Residential Unit shall not exceed $250 during the first twelve (12) months of such period, $260 during the second twelve (12) months of such period, $270 during the third twelve (12) months of such period, $280 during the fourth twelve (12) months of such period, and $290 during the fifth twelve (12) months of such period. Notwithstanding the foregoing, to the extent that a law firm or title agent, licensed to do business in the State of New York, receives immediately available funds or a certified check drawn on a bank licensed to do business in the State of New York, in the amount of the Administrative Fee and/or any Rent then due with respect to the Unit, such law firm or title agent shall hold such funds in trust for Landlord for delivery promptly after the Sale and the conditions set forth in Section 43.07(b)(i) and this Section 43.07(c) shall be deemed satisfied.

(d) Any purported Sale of any Unit not made in compliance with the provisions of Sections 43.06, 43.07 and 43.08 shall not be effective to sell, assign, lease, or otherwise Transfer, mortgage or otherwise encumber any interest in any Unit, shall not be recognized by Landlord, and is not permitted to be recognized by any Board, it being agreed and acknowledged that the foregoing with respect to any mortgage affecting a Residential Unit shall not affect the right of the holder of any note or other evidence of indebtedness payable to such holder in connection with any such mortgage to enforce payment of such obligation personally against any obligor thereunder to the extent the enforceability or enforcement thereof does not involve or require, or the holder elects not to pursue, foreclosing any lien in respect of such indebtedness (including any judgment lien) against any such Residential Unit. Whenever a Unit Owner (other than Declarant) sells such Unit Owner's interest in a Unit and effects such assignment as provided in Section 43.07(b) (other than to a mortgagee of a Recognized Mortgage or pursuant to a lease), and the assignee executes the Unit Deed, assuming all of the obligations under the Condominium Documents of the Unit Owner of such Unit, the assignor will have no further liability for any of the obligations of the Unit Owner of such Unit under this Lease to be thereafter performed.

(e) No Sale of a Unit by a Unit Owner is permitted unless a Certificate of Occupancy has been issued and has not been suspended or revoked for the applicable Unit and a correct and complete copy of such Certificate of Occupancy has been delivered to Landlord.

(f) No debt may be incurred by the Condominium Board pursuant to Section 339jj of the Condominium Act or otherwise except with Landlord's prior written consent, which consent Landlord is permitted to withhold in its sole discretion, and in no event without the approval of the Landlord is any such debt permitted to be secured by any lien on or any interest in the Premises or on any Unit or any other interest under the Condominium Documents.

Section 43.08. Additional Provisions Applicable to Residential Unit Mortgages.

(a) No Residential Unit Owner shall be permitted to mortgage or encumber such Unit Owner's Residential Unit except in strict compliance with the terms of this Section 43.08. A Residential Unit Owner may mortgage its interest in a Unit to any Person (such mortgage is herein referred to as a "Residential Unit Mortgage" and the holder of such Residential Unit Mortgage is herein referred to as a "Residential Unit Mortgagee"), provided that such Residential Unit Owner has complied with the provisions of this Section 43.08, and provided, further, that such Residential Unit Mortgage is subject and subordinate to the terms, provisions and conditions of this Lease and the applicable Unit Deed as provided in Subsection (d) of this Section 43.08. The holder of any Residential Unit Mortgage is required to acknowledge and agree in such Residential Unit Mortgage and in a recognition agreement in the form of Exhibit S annexed hereto or such other form as may be approved by Landlord (such agreement is herein referred to as a "Residential Unit Mortgagee Subordination and Recognition Agreement"), executed and delivered to Landlord by such Residential Unit Mortgagee, that the lien of such Residential Unit Mortgage is in all cases subordinate to the lien of the Condominium Board for that portion of Common Charges that constitutes Residential Proportionate Rent payable at any time by the Residential Unit Owner granting such Residential Unit Mortgage, and that in the case of the lien of any mortgage other than a first mortgage, such lien is subordinate to the lien of the Condominium Board for all Common Charges. No Residential Unit Mortgage shall be valid or enforceable against any Person unless and until the holder thereof shall have executed and delivered a Residential Unit Mortgagee Subordination and Recognition Agreement in accordance with the terms of this Section 43.08(a). The foregoing shall not affect the right of the holder of any note or other evidence of indebtedness payable to such holder to enforce payment of such obligation personally against any obligor thereunder to the extent the enforceability or enforcement thereof does not involve or require, or the holder elects not to pursue, foreclosing any lien in respect of such indebtedness (including any judgment lien) against any Residential Unit.

(b) The lien of any Residential Unit Mortgage against the interest of a Residential Unit Owner in a Unit is unenforceable and without force or effect unless the Residential Unit Mortgagee, such Residential Unit Mortgage and such Unit Owner each complies with all of the provisions of Sections 43.07 and 43.08. Notwithstanding any other provision of this Lease, Landlord shall have no obligation hereunder to a Residential Unit

Mortgagee and no Residential Unit Mortgagee has any rights hereunder unless such Residential Unit Mortgagee has complied with all of the provisions of Sections 43.07 and 43.08.

(c) If a representative (the "Residential Unit Mortgagee Representative") is designated by any Board or any Residential Unit Mortgagee or Mortgagees and Landlord is notified of such fact, the Residential Unit Mortgagee Representative will be permitted to attend, to the same extent as a Residential Unit Mortgagee, any arbitration or other proceedings, including condemnation proceedings and insurance adjustment proceedings, provided for in the applicable Condominium Documents and will be permitted to exercise any rights afforded under Article 10 or other provisions of this Lease to Mortgagee in such arbitration or other proceedings.

(d) Each Residential Unit Mortgage must be subject and subordinate to this Lease and to all of the terms, covenants and conditions hereof, without limiting, however, any rights of a Residential Unit Mortgagee as set forth in Section 43.10(b) and (c). By accepting a Residential Unit Mortgage, a Residential Unit Mortgagee is deemed to be bound by all the terms, covenants, and conditions of this Lease and the Condominium Documents.

(e) By acceptance of a Residential Unit Mortgage, a Residential Unit Mortgagee expressly waives any rights the Residential Unit Mortgagee may have under and pursuant to Section 339(z) of the Condominium Act to the extent any provision of said Section 339(z) may otherwise apply with respect to Residential Proportionate Rent due from any Residential Unit Owner, including any Defaulting Residential Unit Owner.

(f) The lien of the Condominium Board for that portion of Common Charges attributable to the Residential Units which does not constitute Residential Proportionate Rent due from a Residential Unit Owner, including a Defaulting Residential Unit Owner, shall be subordinate to the lien of a Residential Unit Mortgage having first priority ahead of any other mortgage lien.

Section 43.09. Landlord's Remedies for a Condominium Default.

In the event of a Condominium Default, the following provisions apply:

(a) In the case of any default which would entitle Landlord to terminate this Lease in accordance with Subsection (g) below, Landlord shall give written notice to the Condominium Board and to each Mortgagee, Residential Unit Mortgagee and to all Unit Owners. In the case of any other Condominium Default, Landlord shall give written notice to the Condominium Board, and the Condominium Board shall be required to give a copy of any such default notice to each Unit Owner, Mortgagee and Residential Unit Mortgagee.

(b) The Condominium Board may, no later than forty-five (45) days after Landlord has given to it such notice, remedy or cause such Condominium Default to be remedied; provided that if curing of such Condominium Default requires the imposition of an assessment or special meeting of any Residential Unit Owner(s) or other Unit Owners for such purpose and/or special meeting of any Residential Unit Owner(s) or other Unit Owner(s) in order to replace the members of any Board or work to be performed, acts to be done or conditions to be

removed (collectively, "Unit Owner Action"), which cannot by their nature reasonably be imposed, conducted, performed, done, removed or completed, as the case may be, within such forty-five (45) day period, any Board, any Unit Owner(s) or any Recognized Mortgagee(s) may cause such Unit Owner Action to be commenced within such forty-five (45) day period and shall thereafter cause such Unit Owner Action to be prosecuted diligently, continuously and in good faith to completion and cause the Condominium Default promptly thereafter to be remedied; provided further that, in all events, such Condominium Default is required to be remedied within one hundred and eighty (180) days after the date on which Landlord has given notice as provided in Section 43.09(a) (or within such longer period to which Landlord may consent in writing). If Unit Owner Action is required to remedy a Condominium Default, the Condominium Board, the Unit Owners or any Recognized Unit Mortgagee(s) on behalf of the Unit Owners, shall notify Landlord thereof and shall keep Landlord fully and currently informed of the status of such Unit Owner Action, the nature and timing of such Unit Owner Action and each step, act or thing done in connection therewith, together with the anticipated completion date of such Unit Owner Action.

(c) If a Condominium Default is not remedied in accordance with Section 43.09(b), Landlord shall have the right to replace the members of the Condominium Board and any Board responsible for failing to remedy such Condominium Default by exercising its right under the resignation signed by each member of each Board as a condition to such member serving on such Board. Landlord shall have the right, but not obligation, to designate new members to replace the members of any Board removed as aforesaid and to perform or cause compliance with the Condominium Covenant that gave rise to such Condominium Default. Any members appointed by Landlord shall have the right to resign at any time in accordance with the provisions of the Condominium Documents, and at Landlord's election, shall have terms of at least twelve (12) months from the curing of the Condominium Default which caused the removal of such Board Members.

(d) The Condominium Board shall pay to Landlord, within twenty (20) days after demand therefor is delivered to such Board: any amounts payable to Landlord under this Lease that any Board has collected from any Residential Unit Owner or otherwise, including Residential Proportionate Rent, and that such Board has not paid to Landlord; and all reasonable costs and expenses incurred by Landlord, including without limitation, reasonable attorneys' fees and disbursements, in connection with any replacement of the members of any Board pursuant to the provisions of Section 43.09(c); and interest on the above amounts at the Involuntary Rate from the respective dates of required payment to Landlord, in the case of amounts collected by such Board and payable to Landlord, or Landlord's incurring of each such cost or expense, until the date of actual repayment to Landlord.

(e) If a Condominium Default is not remedied in accordance with Section 43.09(b) and Landlord performs or causes to be performed the Condominium Covenant or cure the condition that gave rise to such Condominium Default in accordance with the provisions of Article 21 of this Lease or as otherwise permitted by law or hereunder, the Condominium Board shall pay to Landlord, within twenty (20) days after demand therefor is delivered to such Board: all reasonable costs and expenses incurred by Landlord, including without limitation, reasonable

attorneys' fees and disbursements, in connection with such performance of such Condominium Covenant or cure of the Condominium Default, and if the Condominium Default is the failure of the Condominium Board to provide insurance or to keep the same in force as required under this Lease, the amount of the insurance premium or premiums not paid, the uninsured amount of any loss, damage and liability and the reasonable costs and expenses of suit, including, without limitation, reasonable attorneys' fees and disbursements, suffered or incurred by reason of such failure to provide insurance; and interest on the above amounts at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense or loss or damage until the date of actual repayment to Landlord. The costs and any expenses and any loss or damage, together with interest at the Involuntary Rate, as described in Section 43.09(d) and this Section 43.09(e), are referred to herein collectively as "Landlord's Condominium Costs".

(f) In the event of any breach or threatened breach of a Condominium Covenant or upon the occurrence of a Condominium Default, Landlord shall be entitled to obtain specific performance of such Condominium Covenant and/or to enjoin such breach or threatened breach of such Condominium Covenant or Condominium Default, without showing any actual damages or that money damages would not afford an adequate remedy and without the need for any bond or other security, and in the event of a Condominium Default that is not remedied in accordance with Section 43.09(b) and that does not consist of a failure of any Board to pay to Landlord Residential Proportionate Rent, Landlord is entitled to invoke any other rights and remedies allowed at law or in equity or by statute or otherwise, but not including any right to terminate this Lease or repossess the Premises or any portion thereof pursuant to Article 24 or otherwise (except the Hotel Unit pursuant to the Hotel Unit Sublease and the Hotel Unit Lease). To the extent permitted by applicable Requirements, Tenant waives, and pursuant to the Bylaws, each Board, each Unit Owner, and each Recognized Mortgagee, respectively, is required to waive, the posting of bonds or other security in any action to enjoin such breach or threatened breach.

(g) In the event of a Condominium Default caused by failure of the Residential Board or the Condominium Board to pay to Landlord Rent attributable to the Residential Units, provided (i) same is not the result of a Residential Unit Owner Default, (ii) the amount of cash in the Residential Security Fund is less than one-half of the Maximum Fund Requirement or the Residential Security Fund Amount (whichever is applicable) plus an amount of interest calculated at the rate of 3% per annum from the Condominium Date, and (iii) Landlord has given any notices required to be given hereunder and any grace and cure periods have expired, including the periods under Section 43.09(b) for the commencement or prosecution of Unit Owner Action or for remedying a Condominium Default, then, Landlord shall be entitled to invoke all rights and remedies allowed at law or equity, including the right to terminate this Lease in accordance with the terms of Article 24 hereof and all other remedies available to Landlord under this Lease upon the occurrence of an Event of Default.

Section 43.10. Remedies with Respect to Residential Unit Owner Defaults.

(a) In the event of a failure of any Residential Unit Owner (a "Defaulting Residential Unit Owner") to pay Residential Rent including any Condominium Default Costs as required under this Lease (hereinafter a "Residential Unit Owner Default"), Landlord and the Condominium Board may exercise any of the remedies provided under this Section 43.10.

(b) Each Residential Unit Owner is required to pay the Residential Rent, including Residential Proportionate Rent, attributable to such Residential Unit Owner's Unit in the manner set forth in this Lease. The Residential Unit Owners shall pay Residential Rent to the Board as part of Common Charges. The obligation of a Residential Unit Owner to pay Residential Rent runs to the Condominium Board and to the Landlord. The obligation of a Residential Unit Owner to pay Condominium Default Costs runs to the applicable Board. Within ten (10) Business Days after a Residential Unit Owner Default, the Condominium Board shall serve a written notice upon the Defaulting Residential Unit Owner specifying the amount of the Residential Rent including the amount of any Condominium Default Costs then due and unpaid (the "Default Notice"). Simultaneously with the giving of the Default Notice to the Defaulting Residential Unit Owner, the Condominium Board shall deliver a copy of the Default Notice to Landlord of said Defaulting Residential Unit Owner. If the Condominium Board fails to send the Default Notice within the time period set forth above, the Default Notice may be sent by Landlord and such failure by the Condominium Board shall be deemed to be a Condominium Default.

(c) Each Residential Unit Mortgagee shall be entitled to the benefit of the notice and cure provisions set forth in the Residential Unit Mortgagee Subordination and Recognition Agreement executed by such Residential Unit Mortgagee with respect to such Residential Unit; and each such Residential Unit Mortgagee shall be entitled to pay to the Condominium Board any portion of Residential Rent and Condominium Default Costs then due and owing by any Defaulting Residential Unit Owner as set forth therein. Provided such Residential Unit Owner Default shall be so remedied within twenty (20) days after service of the applicable Default Notice, the Condominium Board and Landlord shall not take any action against the Defaulting Residential Unit Owner and each such Residential Unit Mortgagee shall have the right to institute and thereafter prosecute foreclosure proceedings and such other proceedings as may be provided pursuant to the terms of the applicable Residential Unit Mortgage. If such Residential Unit Owner Default is not remedied within twenty (20) days after service of the applicable Default Notice, the Condominium Board or Landlord as provided below may commence against such Defaulting Residential Unit Owner any action or proceeding at law or in equity as permitted under this Lease without any further notice to such Residential Unit Mortgagee or Defaulting Residential Unit Owner.

(d) Landlord shall accept performance by a Residential Unit Mortgagee of any covenant, condition or agreement on a Residential Unit Owner's part to be performed with the same force and effect as though performed by such Residential Unit Owner. If, with respect to any Residential Unit there is more than one Residential Unit Mortgagee, Landlord shall

recognize the Residential Unit Mortgagee whose Residential Unit Mortgage is senior in lien as the Residential Unit Mortgagee entitled to the rights afforded by this Article 43.

(e) No earlier than twenty (20) Business Days and no later than ninety (90) calendar days after a Default Notice is given as provided for in Section 43.10(b), and provided that neither the Defaulting Residential Unit Owner nor any Residential Unit Mortgagee has cured said Residential Unit Owner Default, the Condominium Board shall institute appropriate proceedings to foreclose the lien on such Unit arising from said Residential Unit Owner Default as provided in Section 339-z of the Condominium Act, in the manner provided in Section 339-aa thereof or in any other manner permitted by Law. Notwithstanding anything to the contrary set forth above, if the Condominium Board does not institute and thereafter prosecute foreclosure proceedings as described above within sixty (60) Business Days of the giving of the Default Notice, the Residential Board shall be deemed authorized to act in place and stead of the Condominium Board to so initiate and prosecute such proceedings. At any time not earlier than twenty (20) days after a Default Notice is given, Legal Proceedings may be maintained to recover a money judgment for unpaid Common Charges required to be paid for the benefit of Landlord or the Condominium Board. If the proceeds received in any Legal Proceedings brought in connection with a Residential Unit Owner Default are less than the sum of the obligations described in Section 43.10(j)(1) through (6) relating to the such Residential Unit Owner Default, the Defaulting Residential Unit Owner shall remain liable for such difference or shortfall.

(f) In the case of a Residential Unit Owner Default, Landlord shall be entitled to draw on the Residential Security Fund as provided in Section 43.12(a) hereof, regardless of whether it has initiated any Legal Proceedings to collect any amounts due to it.

(g) If the Condominium Board and the Residential Board fail to institute foreclosure proceedings within ninety (90) calendar days as described in Section 43.10(e), or after instituting such proceedings, fail diligently to prosecute the same to final judgment, then Landlord shall have the right to prosecute any Legal Proceeding in its own name or in the name of either of such Boards and the right of each of such Boards to bring any Legal Proceeding is hereby assigned to Landlord to permit Landlord to bring, and confirm its right to bring, any Legal Proceeding. In furtherance of the foregoing, the Condominium Board, as Tenant hereunder, hereby assigns to Landlord all of its right, title and interest in, to and under the lien for Common Charges granted to the Condominium Board under the Condominium Act or other applicable law for the purpose of bringing any Legal Proceedings to enforce any such lien or otherwise enforcing or collecting on such lien. Such assignment shall be self-operative and shall not require any further act or the execution of any further document to confer upon Landlord the direct right to institute and maintain such Legal Proceeding (including foreclosure proceedings) as set forth above. At the request of Landlord, each Board shall execute and deliver to Landlord such further documents and instruments to confirm and perfect such assignment, as shall reasonably be requested by Landlord. Such failure by the Condominium Board and the Residential Board to institute foreclosure proceeding within ninety (90) calendar days, or the failure to diligently prosecute the same to final judgment shall be deemed to be a Condominium Default hereunder.

(h) Each Board shall cooperate with Landlord in any actions or proceedings brought or rights or remedies exercised by Landlord, including, without limitation, the Legal Proceedings, against any Defaulting Residential Unit Owner (and such other Persons as Landlord may deem necessary or desirable) and, upon Landlord's request, and at no cost or expense to Landlord, shall promptly furnish to Landlord such information and documentation as may reasonably be requested by Landlord.

(i) If, during the pendency of any such action or proceeding by Landlord, any Board or the Defaulting Residential Unit Owner's Residential Unit Mortgagee remedies such Residential Unit Owner Default, Landlord shall take reasonable action to permit the party so acting to continue such action or proceeding.

(j) Any funds received by any Board, by any Residential Unit Mortgagee or by Landlord in respect of a Residential Unit Owner Default shall be applied according to the following priority:

(1) first, to pay such Defaulting Residential Unit Owner's Residential Proportionate Rent obligations to Landlord, together with interest thereon at the Involuntary Rate commencing on the date on which such Residential Proportionate Rent was due, to the extent such sums were not previously paid or withdrawn from the Residential Security Fund (the obligations described in this clause (1) are herein referred to as the "Residential Unit Obligations");

(2) second, to reimburse the Residential Security Fund for any amounts withdrawn therefrom by Landlord in accordance with the terms of this Lease in respect of such Residential Unit Owner Default or any Landlord Condominium Costs attributable to the Residential Units;

(3) third, to satisfy any tax liens and other liens, if any, with respect to the Residential Unit or the Defaulting Residential Unit Owner as to which such Residential Unit Default has occurred, which have priority over the lien of the Condominium Board for Common Charges or the lien of any Residential Unit Mortgagee;

(4) fourth, to pay such Defaulting Residential Unit Owner's monetary obligations to the Residential Unit Mortgagee, if any, under a Residential Unit Mortgage the lien of which has first priority ahead of any other mortgage lien;

(5) fifth, to pay to Landlord the balance of any Residential Rent including any Landlord's Condominium Costs with respect to the Residential Unit not otherwise reimbursed, together with the interest and on the unpaid amount at the Involuntary Rate;

(6) sixth, to pay to the Condominium Board the balance of any Common Charges due and unpaid by such Defaulting Residential Unit Owner, including all Condominium Default Costs and late fees and interest;

(7) seventh, to pay such Defaulting Residential Unit Owner's monetary obligations to any Residential Unit Mortgagee under a Residential Unit Mortgage the lien of which does not have first priority ahead of all other mortgage liens; and

(8) eighth, any excess to such Defaulting Residential Unit Owner or as may otherwise be required by law.

Section 43.11. Residential Security Fund.

(a) Tenant shall deliver or cause to be delivered to Landlord, immediately prior to the Condominium Date, cash in an aggregate amount of not less than the Residential Security Fund Amount.

(b) The Residential Security Fund Amount, as adjusted pursuant to Section 43.11(d), and any interest or income earned thereon are herein referred to as the "Residential Security Fund". Landlord or the Condominium Depository, as the case may be, shall retain the Residential Security Fund and shall disburse or cause disbursement of amounts therefrom only in accordance with the provisions of this Article 43.

(c) Landlord shall promptly deposit the Residential Security Fund Amount delivered to it as cash with a commercial bank or trust company that is a member of the New York Clearing House Association designated by Landlord (the "Condominium Depository"). Landlord shall cause all monies so deposited with the Condominium Depository to be held in one or more insured interest bearing accounts or invested by the Condominium Depository in bank certificates of deposit or United States treasury obligations. Landlord shall promptly notify the Condominium Board of the identity and address of the Condominium Depository and shall cause the Condominium Depository to furnish the Condominium Board with any information reasonably requested by the Condominium Board with respect to the Residential Security Fund on deposit with the Condominium Depository. Landlord, the Condominium Board and the Condominium Depository shall take the actions necessary for the fees of the Condominium Depository, if any, to be paid from the Residential Security Fund.

(d) Within thirty (30) days after Landlord obtains information from which it is reasonably possible to calculate the initial Maximum Fund Requirement or any subsequent adjustment of the Maximum Fund Requirement, Landlord shall calculate the same and notify the Condominium Board of such calculation. If the initial Maximum Fund Requirement as so calculated exceeds the Residential Security Fund Amount, the Condominium Board shall, within one hundred twenty (120) days after notice of such calculation is given by Landlord to the Condominium Board, cause an amount in cash equal to such excess to be paid to the Condominium Depository to be held as part of the Residential Security Fund. If the Maximum Fund Requirement as so calculated at any time is less than the Residential Security Fund Amount, then upon request by the Condominium Board, Landlord shall cause the Condominium Depository to pay to or as directed by the Condominium Board, from the Residential Security Fund, the amount, if any, by which the Residential Security Fund Amount exceeds the Maximum Fund Requirement as so calculated.

(e) If not previously applied by Landlord in accordance with this Article 43, Landlord shall cause the Condominium Depository to disburse the remainder of the Residential Security Fund to the Condominium Board on the Expiration Date.

Section 43.12. Application of Residential Security Fund.

(a) Landlord shall be permitted to draw upon the Residential Security Fund in whole or in part in payment of the following amounts (such amounts are herein called the "Deficiency Amounts"): (i) Landlord's Condominium Costs allocable to any Residential Unit which remain unpaid for a period of twenty (20) days following Landlord's demand therefor as provided in Section 43.09(d) or (e), and (ii) any Residential Unit Obligation which remains unpaid for a period of one hundred twenty (120) days. Landlord shall, within ten (10) days after any such draw on the Residential Security Fund, notify the Condominium Board thereof, which notice is required to set forth the amount so drawn by Landlord pursuant to the foregoing provisions of this Section 43.12 and the basis under this Lease for the withdrawal of such amounts.

(b) If Landlord draws on the Residential Security Fund pursuant to Section 43.12(a) in payment of any Residential Unit Obligation, the resulting Deficiency Amount is required to be reimbursed as provided in Section 43.10(j). If Landlord draws on the Residential Security Fund pursuant to Section 43.12(a) in payment of any Landlord's Condominium Costs allocable to the Residential Units, then the amount thereof shall be required to be assessed against all Residential Units Owners and included in Residential Proportionate Rent as part of Common Charges required to be paid to the Condominium Board and Landlord by the appropriate Residential Unit Owner(s), or, if appropriate under the Condominium Documents, by all Residential Unit Owners. The portion of Residential Proportionate Rent that is paid by Residential Unit Owners pursuant to the preceding sentence is required to be paid to Landlord and deposited in the Residential Security Fund as provided in Section 43.12(c).

(c) If after such time that Landlord has drawn on the Residential Security Fund pursuant to Section 43.12(a), the Condominium Board or any other Person reimburses Landlord for all or any portion of the applicable Deficiency Amount, Landlord shall promptly deposit the amount of such reimbursement with the Condominium Depository for deposit in the Residential Security Fund.

Section 43.13. Remedies with Respect to Commercial Unit Owner Defaults.

(a) In the event of a failure of the Hotel Unit Owner (the "Defaulting Hotel Unit Owner" to pay Hotel Rent as required under this Lease (hereinafter a "Hotel Unit Owner Default"), Landlord, the Condominium Board and the Commercial Board, as the case may be, may exercise any of the remedies provided under this Section 43.13. Such rights and remedies shall be in addition to any rights and remedies Landlord may have as sublessor under the Hotel Unit Sublease.

(b) The Hotel Unit Owner is required to pay the Hotel Rent including any Default Costs attributable to a Hotel Unit Owner Default. The obligation of the Hotel Unit

Owner to pay Hotel Rent runs to the Condominium Board, the Commercial Board and to the Landlord. The obligation of the Hotel Unit Owner to pay Condominium Default Costs and Landlord Default Costs runs to the applicable Board and to Landlord, respectively. Within ten (10) Business Days after the occurrence of a Hotel Unit Owner Default, Condominium Board shall serve a written notice upon the Defaulting Hotel Unit Owner specifying the amount of the Hotel Rent then due and unpaid (the "Hotel Default Notice"). Simultaneously with the giving of the Hotel Default Notice to the Defaulting Hotel Unit Owner, the Condominium Board shall deliver a copy of the Hotel Default Notice to the Commercial Board and Landlord and to all Mortgagees entitled to cure the Hotel Unit Owner Default. If the Condominium Board fails to send the Hotel Default Notice within the time period and to the parties set forth above, such notice may be sent by the Commercial Board or Landlord and such failure by the Condominium Board shall be deemed to be a Condominium Default.

(c) Each such Mortgagee shall be entitled to pay to the Condominium Board any portion of the Hotel Rent and Default Costs then due and owing by the Defaulting Hotel Unit Owner. Provided such Hotel Unit Owner Default shall be so remedied within twenty (20) days after service of the applicable Hotel Default Notice, Landlord shall not take any action against the Defaulting Hotel Unit Owner and each such Mortgagee shall have the right to institute and thereafter prosecute foreclosure proceedings and such other proceedings as may be provided pursuant to the terms of the Mortgage. If such Hotel Unit Owner Default is not remedied within twenty (20) days after service of the applicable Hotel Default Notice, the Condominium Board or Landlord may commence any action against such Defaulting Hotel Unit Owner without any further notice to such Mortgagees or Hotel Operator or Defaulting Hotel Unit Owner.

(d) Landlord shall accept performance by a Mortgagee of any covenant, condition or agreement on the Hotel Unit Owner's part to be performed with the same force and effect as though performed by the Hotel Unit Owner. If, with respect to the Hotel Unit there is more than one Mortgagee, Landlord shall recognize the Mortgagee whose Mortgage is senior in lien as the Mortgagee entitled to the rights afforded by this Section 43.13.

(e) No earlier than twenty (20) Business Days and no later than ninety (90) calendar days after a Hotel Default Notice is given as provided for in Section 43.13(b), and provided that neither the Defaulting Hotel Unit Owner, nor any Mortgagee has cured said Hotel Unit Owner Default, the Condominium Board shall institute appropriate proceedings to foreclose the lien on the Hotel Unit arising from the Hotel Unit Owner Default as provided in Section 339-z of the Condominium Act, in the manner provided in Section 339-aa thereof or in any other manner permitted by Law. Notwithstanding anything to the contrary set forth above, if the Condominium Board does not institute and thereafter prosecute foreclosure proceedings as described above within sixty (60) Business Days of the giving of the Hotel Default Notice, the Commercial Board shall be deemed authorized to act in place and stead of the Condominium Board to so initiate and prosecute such proceedings. At any time not earlier than twenty (20) days after a Hotel Default Notice is given, Legal Proceedings may be maintained to recover a money judgment for unpaid Common Charges required to be paid for the benefit of Landlord or the Condominium Board. If the proceeds received in any Legal Proceedings instituted as the result of a Hotel Unit Owner

Default are less than the Hotel Unit Obligations, the Hotel Unit Owner shall remain liable for such difference or shortfall.

(f) If the Condominium Board and the Commercial Board fail to institute foreclosure proceedings within ninety (90) calendar days as described in Section 43.13(e), or after instituting such proceedings, fail diligently to prosecute the same to final judgment, then Landlord has the right to prosecute any Legal Proceeding in its own name or in the name of either of such Boards, and shall be entitled to invoke any other rights and remedies allowed at law or equity or under this Lease applicable to a Hotel Unit Owner Default, including without limitation, the right to foreclose the lien under the Condominium Act and the right of each of such Boards to bring any Legal Proceeding is hereby assigned to Landlord to permit Landlord to bring, and confirm its right to bring, any Legal Proceeding. In furtherance of the foregoing, the Condominium Board, as Tenant hereunder, hereby assigns to Landlord all of its right, title and interest in, to and under the lien for Common Charges granted to the Condominium Board under the Condominium Act or other applicable law for the purpose of bringing any Legal Proceedings to enforce any such lien or otherwise enforcing or collecting on such lien. Such assignment shall be self-operative and shall not require any further act or the execution of any further document to confer upon Landlord the direct right to institute and maintain such Legal Proceeding (including foreclosure proceeding) as set forth above. At the request of Landlord, each Board shall execute and deliver to Landlord such further documents and instruments to confirm and perfect such assignment, as shall reasonably be requested by Landlord.

(g) The Condominium Board and the Commercial Board shall cooperate with Landlord in any actions or proceedings brought or rights or remedies exercised by Landlord hereunder, including, without limitation, the Legal Proceedings, against the Defaulting Hotel Unit Owner (and such other Persons as Landlord may deem necessary or desirable) and, upon Landlord's request, and at no cost or expense to Landlord, shall promptly furnish to Landlord such information and documentation as may reasonably be requested by Landlord.

(h) If, during the pendency of any such action or proceeding by Landlord, any Board, or the Defaulting Hotel Unit Owner's Mortgagee remedies a Hotel Unit Owner Default, Landlord shall take reasonable action to permit the party so acting to continue such action or proceeding, provided the applicable Board or the Defaulting Hotel Unit Owner's Mortgagee has reimbursed Landlord for any Default Costs incurred by Landlord.

(i) Any funds received by any Board, by any Mortgagee or by Landlord in respect of a foreclosure Legal Proceeding to enforce Hotel Unit Owner Default shall be applied according to the following priority:

(1) first, to pay to Landlord or reimburse Landlord for any Landlord's Condominium Costs and any Landlord Default Costs incurred as a result of such Hotel Unit Owner Default;

(2) second, to pay the Defaulting Hotel Unit Owner's unpaid Hotel Rent obligations to Landlord, together with interest thereon at the Involuntary Rate commencing on the date on which such Hotel Rent was due;

(3) third, to satisfy any tax liens and other liens, if any, with respect to the Hotel Unit or the Defaulting Hotel Unit Owner, which have priority over the lien of the Condominium Board for Common Charges or the lien of any Mortgagee;

(4) fourth, to pay to the Condominium Board the balance of any Common Charges due and unpaid by the Defaulting Hotel Unit Owner, including all Condominium Default Costs and all late fees and interest;

(5) fifth, to pay the Hotel Defaulting Unit Owners' monetary obligations to any Mortgagee (the sum of the obligations described in clauses (1) through (5) are collectively referred to as the "Hotel Unit Obligations");

(6) sixth, to pay the Defaulting Hotel Unit Owner's monetary obligations to the Hotel Operator, if any; and

(7) seventh, any excess to the Defaulting Hotel Unit Owner or as may otherwise be required by law.

(j) Notwithstanding anything to the contrary contained in this Section 43.13, during the terms of the Hotel Unit Lease and the Hotel Unit Sublease the provisions of Section 43.13 shall not apply.

Section 43.14. Effect of Unit Owner Default on other Unit Owners.

From and after the Condominium Date, failure of any Unit Owner to pay Rent as required under this Lease or perform any other obligation required hereunder does not constitute a default of any other Unit Owner, or otherwise entitle Landlord to terminate this Lease or repossess the Premises or any portion thereof hereunder or otherwise (except the Hotel Unit pursuant to the Hotel Unit Sublease and the Hotel Unit Lease). Nothing contained in the preceding sentence shall prevent Landlord from exercising any of its rights against a Defaulting Unit Owner, subject to the provisions of this Lease, including Landlord's rights to commence and prosecute an action or proceeding against a Defaulting Unit Owner, and the right of Landlord as sublessor under the Hotel Unit Sublease to exercise all of its remedies under the Hotel Unit Sublease. Notwithstanding any other provision of this Article 43, if Tenant or any successor of Tenant, whether as Declarant or as Unit Owner or otherwise, fails to make any payment to Landlord required to be made under this Lease, or otherwise fails to perform any obligation required to be performed by Tenant under this Lease, and such failure occurs before the Condominium Date, then Landlord may exercise all of its rights and remedies under this Lease against any Tenant, Declarant and any other Person (whether or not the Declaration has been recorded), including the termination of this Lease.

Section 43.15. Remedies Cumulative.

The rights and remedies of Landlord set forth in this Article 43 and in the Hotel Unit Sublease shall be cumulative and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Article 43 and in the Hotel Unit

Sublease does not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Article 43 and in the Hotel Unit Sublease. Landlord shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder or thereunder, and no waiver shall be valid unless in writing, signed by Landlord, and then only to the extent therein set forth. A waiver by Landlord of any right or remedy hereunder or thereunder on any one occasion shall not be construed as a bar to any right or remedy which Landlord would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of Landlord any right, power or privilege hereunder and in the Hotel Unit Sublease shall operate as waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder and under the Hotel Unit Sublease provided are cumulative and may be exercised singly or concurrently, and shall be construed as affording Landlord rights additional to and not exclusive of any rights and remedies conferred under the laws of the State of New York or any other laws.

Section 43.16. Miscellaneous.

(a) If Taxes are assessed and levied by New York City against any Unit, Landlord shall credit payment of such Taxes to New York City by each Unit Owner against Proportionate Rent payable by such Unit Owner.

(b) Subject to the rights of Landlord under this Lease, the Condominium Board is entitled to maintain its lien for unpaid Common Charges as provided in the Condominium Act.

(c) Except as otherwise specifically provided in this Lease, any notice, demand, request, consent, approval or other communication provided in this Lease or in any Unit Deed to be given by Landlord to Tenant or to a Unit Owner is effective if addressed to the Condominium Board on behalf of all Unit Owners and given or served as provided in Article 25, except any such notice, demand, request, consent, approval or other communication relating solely to a Unit Owner or such Unit Owner's Unit is effective only if addressed to the affected Unit Owner and given or served as provided in Article 25.

(d) At such time as the Units are separately assessed by the New York City Department of Finance, PILOT payments with respect to each Unit under Section 3.02 will be calculated based on the tax assessment for such Unit. Until such time as the Units are separately assessed by the New York City Department of Finance, PILOT payments with respect to each Unit under Section 3.02 will be calculated in accordance with the percentage of Common Interest allocated to such Unit.

(e) Subject to compliance with the provisions of Article 13, Tenant may permit any Residential Unit Owner, except a Defaulting Residential Unit Owner, to make any changes, alterations or additions to the interior of its Residential Unit and may combine two or more of its Residential Units and may subdivide and otherwise reconfigure a Residential Unit without Landlord's consent.

(f) The Introduction section of the Condominium Plan is required to contain the following provisions:

(i) "DETERMINATION BY BATTERY PARK CITY AUTHORITY THAT THIS PLAN AND THE DECLARATION AND BYLAWS OF THE CONDOMINIUM CONFORM TO THE PROVISIONS OF THE LEASE DOES NOT MEAN THAT BATTERY PARK CITY AUTHORITY HAS APPROVED THIS OFFERING."

(ii) "EACH UNIT OWNER, INCLUDING EACH RESIDENTIAL UNIT OWNER, IS REQUIRED TO PAY, AS PART OF SUCH UNIT OWNER'S COMMON CHARGES, RENT WHICH IS DUE AND PAYABLE TO BATTERY PARK CITY AUTHORITY AS LANDLORD UNDER THE LEASE. SUBMISSION OF THE DECLARANT'S LEASEHOLD ESTATE IN THE LAND AND THE BUILDING TO THE CONDOMINIUM FORM OF OWNERSHIP DOES NOT DIMINISH OR IMPAIR ANY OF LANDLORD'S RIGHTS AGAINST A UNIT OWNER WHO FAILS TO PAY SUCH UNIT OWNER'S RENT OR OTHERWISE DEFAULTS UNDER ANY OF THE TERMS OR CONDITIONS OF THE LEASE OR THE CONDOMINIUM DOCUMENTS."

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

BATTERY PARK CITY AUTHORITY,
d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____
Name: Timothy S. Carey
Title: President and CEO

TENANT:

MILLENNIUM BPC DEVELOPMENT LLC,
a New York limited liability company

By: _____
Name: Philip E. Aarons
Title: Vice President

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

On the 7th day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Timothy S. Carey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sabastian R. Belf
Notary Public

My Commission Expires:

SABASTIAN R. BELFON
Notary Public, State of New York
No. 01BE6030262
Qualified in New York County
Commission Expires Sept. 07, 2001

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 7th day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Philip E. Aarons, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Sabastian R. Belf
Notary Public

My Commission Expires:

SABASTIAN R. BELFON
Notary Public, State of New York
No. 01BE6030262
Qualified in New York County
Commission Expires Sept. 07, 2001

SCHEDULE 1

A. Hotel Baseline Amounts/Recapture Amount

Lease Year	Hotel Baseline Amounts	Recapture Amount
1	$0	
2	$0	
3	$0	
4	$ 449,848	
5	$ 926,688	
6	$1,431,733	
7	$1,966,246	
8	$2,531,542	
9	$2,607,488	
10[1]	$2,685,713	
11		Recapture Amount[2]
12		Recapture Amount
13		Recapture Amount
14		Recapture Amount
15		Recapture Amount
16		Recapture Amount
17		Recapture Amount
18		Recapture Amount
19		Recapture Amount
20		Recapture Amount

All capitalized terms not defined in this Schedule 1 shall have the meanings provided in the Lease.

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[1] The Hotel Baseline Amount indicated for Lease Year 10 shall be increased by an additional pro rata amount of such payment for the period from the end of Lease Year 10 until the next succeeding July 1.

[2] Recapture Amount is as defined in Paragraph B below.

B. Definitions:

"Recapture Amount" as indicated in Tax Years 11-20 in Paragraph A above shall mean the amount for each such Tax Year which shall be 1/10 of the difference between (A) the sum of the amounts applicable to each of Lease Years 1-10 which are the greater of (x) the amount of Projected Full Taxes (as indicated in the table below) for the Hotel Portion for each of Lease Years 1-10 or (y) the amount of Taxes for the Hotel Portion for each of the corresponding Lease Years 1-10, and (B) the aggregate amount of Hotel Baseline Payments in Paragraph A above for the Hotel Portion for each of the corresponding Lease Years 1-10:

Lease Year	**Projected Full Taxes**
1	$ 230,580
2	$ 230,580
3	$2,183,730
4	$2,249,242
5	$2,316,719
6	$2,386,221
7	$2,457,808
8	$2,531,542
9	$2,607,488
10[3]	$2,685,713

[3] Projected Full Taxes indicated for Lease Year 10 shall be increased by an additional pro rata amount for the period from the end of Lease Year 10 until the next succeeding July 1.

EXHIBIT A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

EXHIBIT B
TITLE MATTERS

1. a. Fifteen (15) foot Sidewalk Easement is shown to affect the most easterly portion of subject premises, said easement is designated as a "no build area".

   b. Variations between lines of fences, curbing and record lines of title.

   As shown on survey made by Vollmer Associates, P.C., dated 12/20/99 shows premises under construction.

2. Covenants, conditions, easements, agreements of records, etc., as follows:

   a) Declaration of Covenants and Restrictions dated 3/15/84 made by Battery Park, City Authority recorded 3/21/84 in Reel 776 page 360.

3. Terms, covenants and conditions of agreement between BPC Development Corporation, Battery Park City Authority and The City of New York, dated as of 4/23/82 recorded on 10/27/82 in Reel 646 page 700, as amended by agreement between The City of New York and Battery Park City Authority dated 9/1/87 in Reel 1463 page 634.

4. Terms, covenants, conditions and provisions of the Settlement Agreement (as defined in the Lease).

5. Terms, covenants and conditions in connection with Option to Purchase dated 6/6/80 granted to The City of New York as set forth in Agreement between New York State Urban Development Corporation, BPC Development Corporation, Battery Park City Authority and The City of New York, dated as of 6/6/80 recorded on 6/11/80 in Reel 527 page 153, as amended by Amendment to Option to Purchase between Battery Park City Authority and The City of New York, dated 8/15/86 recorded 10/22/86 in Reel 1133 page 582 and further amended by Second Amendment to Option to Purchase Between Battery Park City Authority and The City of New York dated as of 5/18/90, recorded 5/30/90 in Reel 1697 page 294.

6. Terms and provisions of the Memorandum of Understanding (as defined in the Lease).

7. Distinctive Street Improvement Maintenance Declarations recorded 9/17/90 in Reel 1729 page 369 and Reel 1729 page 378.

8. Distinctive Street Improvement Maintenance Declaration recorded 9/17/90 in Reel 1729 page 385 as modified by Reel 1891 page 1349.

9. Terms, covenants, conditions, provisions and agreements in the Master Lease (as defined in the Lease).

10. Terms, covenants, conditions, provisions and agreements in Lease dated as of 6/30/91 between The City of New York and Battery Park City Authority recorded 8/2/91 in Reel 1802 page 198.

11. Affidavit of Service by Certified Mail made by Gulrunkh Irani recorded on 6/28/99 in Reel 2931 Page 790 (for so long as such matter remains an exception on Schedule B to the Certification of Title issued by Commonwealth Land Title Insurance Company under Title No. LT 990043).

12. Map approved by the City of New York, bearing Acc. No. 30071 (such map being referenced in agreement dated as of 4/23/82 recorded on 10/27/82 in Reel 646 page 700, as more fully described in paragraph 3 above), as amended by Acc. No. 30112 (such amended map being referenced in agreement between The City of New York and Battery Park City Authority dated 9/1/87 in Reel 1463 page 634, as more fully described in paragraph 3 above).

13. Such a state of facts as an accurate survey or physical inspection of the Premises might disclose.

14. Any and all restrictions or limitations imposed or to be imposed by any governmental authority, including, without limitation, building and setback lines, zoning and planning laws, rules and regulations, inland and tidal wetlands regulations, historic district regulations and ordinances of the municipality and district, if any, in which the Premises are situated, as well as any public or private law.

EXHIBIT C

Design Guidelines (together with Supplemental Letter)

Timothy S. Carey
President / CEO

BATTERY PARK CITY AUTHORITY

January 1, 2000

Mr. Mario Palumbo
Millennium Partners
1995 Broadway – 3rd Floor
New York, NY 10023

Dear Mario:

We feel that the building, as designed, meets the spirit of the Design Guidelines with respect to: (a) the amount of stone and the openings contained in the base; (b) the building facade masonry percentages; (c) the location of curtainwall; (d) the location of venting and; (e) the relationship to the Statue of Liberty axis.

Therefore, with respect to these issues, your building will be deemed to be in compliance with the Design Guidelines. We will review the Design Development submission for conformance to the Schematic Submission and for resolution of the issues outlined in Stephanie Gelb's October 22, 1999 letter to Todd Schliemann and in my letter sent to Millennium, dated October 18, 1999.

Very truly yours,

Timothy S. Carey

cc: Todd Schliemann
Gary Handel
Timothy Carey
Stephanie Gelb
Michael Ketring
Peter McCourt

Design Guidelines for Block 1



NOVEMBER 1999

PREPARED BY

Beyer Blinder Belle
Architects & Planners LLP

PREPARED FOR

Hugh L. Carey
Battery Park City Authority

Block 1 Development Design Guidelines

I. INTRODUCTION

Battery Park City (BPC) is a 92-acre landfill site on the Hudson River at the tip of Lower Manhattan. Extending from historic Pier A and Battery Park on the south to Chambers Street on the north, it offers a 24-hour residential and commercial community with spectacular harbor views; extensive parks and open spaces; excellent access to mass transit; and close proximity to Wall Street, the World Trade Center, and Tribeca.

The Design Guidelines for Site 1 (hereinafter, the "Design Guidelines") have been established by the Battery Park City Authority d/b/a/ Hugh L. Carey Battery Park City Authority ("Authority") to define the urban and architectural requirements for a building on this prominent development parcel. The Design Guidelines also provide an overview of the urban conditions and infrastructure surrounding the site.

Development on Site 1 shall be in compliance with the zoning requirements contained in the Special Battery Park City District and other applicable provisions of the New York City Zoning Resolution (collectively, the "Zoning"). In some instances the Design Guidelines are more restrictive than the Zoning and in those cases the more restrictive requirements must be followed.

Figures or descriptions in these Design Guidelines of other parcels and improvements on such parcels including, but not limited to, existing structures, potential buildings or bulk models, are for illustrative purposes only and shall not be binding on the Authority.

These Design Guidelines are intended to ensure the design quality of the neighborhood. Many of New York City's premier transient and residential hotels are located in primarily residential neighborhoods. It was therefore decided that Block 1 be developed with hotel and residential uses. It is the intent of these Design Guidelines to ensure that the building including the ground floor storefronts be compatible with the surrounding residential neighborhood. Glass, fenestration and lighting must be in keeping with the residential character of the neighborhood and signage is to be tasteful and restrained.

II. URBAN DESIGN GUIDELINES – BLOCK 1

A. SITE AREA (See *Figure I.1* and *Figure I.2*)

The approximate site area is 42,100 S.F.

B. FLOOR AREA

The maximum permitted floor area is twelve times the site area, for a total of approximately 505,200 square feet. The definition of the term "Floor Area" as used in these Design Guidelines is the same as in the Zoning. All development rights to zoning floor area not used for the initial construction of the development on Block 1 in accordance with these Design Guidelines are retained by the Authority.

C. LOCATION AND EASEMENTS (See *Figure I.1* and *Figure I.2*)

Block 1 is bounded by Battery Place, an unmapped area leased by the Authority from the City of New York known as "Little West Street", and First Place. The portion of Block 1 which is south of the "no – build" line between Battery Place and Little West Street (described in the Zoning), which is approximately 9,300 square feet, must be developed as a public open space (the "Public Open Space"), as described in these Design Guidelines. The 15-foot wide public sidewalk easement ("Sidewalk Easement") and the sidewalks along Battery Place and First Place (these sidewalks and the Sidewalk Easement being collectively known as the "Sidewalks") must be built by the developer consistent with the guidelines set forth herein. The Public Open Space and the Sidewalks are to be maintained by the developer.

D. USE AND ACCESS (See *Figure I.3*)

The site is to be devoted to hotel and residential uses. Ground floor uses must include a restaurant space, a residential lobby, the Public Amenity Space described below and a hotel lobby and registration area. Retail space may also be included on the ground floor. The first floor of the tower portion of the building (including the adjacent rooftop of the streetwall portion of the building along Battery Place) must include a first class to luxury or deluxe restaurant which is open for evening dining on a daily basis. The restaurant on the first tower floor shall contain (1) a minimum interior area of 1,900 square feet including a minimum area of 1,200 square feet for the dining area, bar area and the circulation area between the dining and bar area (but not including hallways and other circulation areas) and (2) a minimum outdoor dining area of 1,900 square feet or such lesser number of square feet (but in no event less than 700 square feet) as is the maximum number of square feet approved by New York City's Department of Buildings. The hotel management company will operate the restaurant on the first tower floor and will use its best efforts to apply for a liquor license for the restaurant. The ground floor restaurant and the first tower floor bar and/or restaurant must be open to

public use with access to facilities contained therein comparable to that for hotel guests, except that discounting for hotel guests may be permitted as deemed appropriate by hotel management. No office space is permitted (other than as accessory to permitted uses) without the express written permission of the Authority.

The hotel shall have a minimum approximate floor area of 200,000 square feet for space occupied by hotel rooms and shall contain at least 10,000 square feet of pre-function, conference, meeting or ballroom spaces. The residential portion of the building (not including hotel rooms rented on other than a daily transient basis) shall not exceed a maximum floor area of 270,000 square feet. There must be a ground floor public lobby for the hotel with an area of approximately 4,000 square feet. Floors above the first floor may only contain hotel (including, including back of house, administrative, pre-function, function, conference, meeting or ballroom spaces), health club, bar, restaurant, residential uses or other uses approved by the Authority. These facilities may have entrances located on Battery Place that are separate from any residential entrance. For residential uses, the entrance must be oriented to Battery Place or Little West Street. For the hotel, the major entrance and the automobile drop-off must be oriented to Little West Street

A contiguous public amenity space of at least 5,000 square feet on the ground floor with an entrance at street level at the north west corner of Block 1 (the "Public Amenity Space") shall be made available to the Skyscraper Museum or, if the Skyscraper Museum does not occupy such space, a not-for-profit entity providing another museum, cultural facility or publicly oriented amenity approved by the Authority shall be permitted to use the space. The design of the Public Amenity Space shall be approved by the Authority to insure that the quality of interior finishes and other design elements is consistent with the rest of the development on Block 1.

The building should respond to the Statue of Liberty axis around which the adjacent Robert F. Wagner, Jr. Park is oriented. The ground floor circulation and design should provide a connection on axis with the Wagner Park pavilions and the Statue of Liberty view.

Service, loading dock and parking access are limited to curb cuts on First Place. The curb cuts shall be either 15 feet wide (for a single cut) or 25 feet wide (for a double cut), and must be located more than 50 feet from the eastern and western property lines.

No parking facilities are permitted except as approved by the Authority.

Except for a fully-enclosed loading dock which shall be located on First Place, back-of-house service uses (other than a hotel management office)

may not front on or be visible from streets but may be located in interior areas of the ground floor.

E. UTILITIES/EMERGENCY EXITS (See *Figure I.4*)

All utility connections may be made from Battery Place; and storm sewers are also available from First Place. In no event may the connections disrupt the tree and street light pattern of the sidewalk on Battery Place. Utility rooms may be located only along First Place unless otherwise approved by the Authority. Emergency exits may open only onto First Place or Little West Street unless otherwise approved by the Authority.

F. BULK (See *Figure I.5*)

A streetwall of 125 to 135 feet in height is mandatory on Battery Place. The tower height at the ceiling of the topmost habitable floor shall be between 380 and 400 feet. The building must be set back 25 feet from the eastern property line except that a two story space (up to a maximum height of 40 feet) containing an entrance and meeting rooms on the second floor may be provided subject to the approval of the design for such space by the Authority. A setback of at least 10 feet from the property line is required on the north side of the building beginning at a point between ground level and 85 feet, and, while the elevation of such setback may vary, such setback must continue along the entire north building wall. An optional setback of no more than 10 feet from the property line is allowed along the mandatory 110-135 foot streetwall beginning at 85 feet. Bulkheads located above the last habitable floor should have an articulated and distinctive profile, and must be integrated into the overall building design. The Ground Floor must have a minimum slab-to-slab height of 15 feet.

G. ARCHITECTURAL FEATURES (See *Figure I.6a* and *Figure I.6b*)

Materials used on the exterior of the building are a critical design element and are subject to the approval of the Authority.

1. Stone Base

A two to three-story stone base is required on all street facades. Special articulation is required at lobby entrances.

2. Streetwall

Traditional New York stone and brick building materials are required in order to provide continuity among the buildings. Building exteriors must

be predominantly masonry. Curtainwall (metal and glass) is permitted only on the southern and western facades of the tower. Exposed concrete slabs are not permitted.

Different brick color tones will be required for developments of adjacent or opposite parcels. The buildings' masonry color or colors must be within a range of warm earth tones. Sensitive arrangements of colors and materials are desirable for decorative purposes in special locations, such as lobby entrances, as well as on the rooftops where they can be enjoyed from a distance.

The predominant material of the streetwall above the stone base must be standard 2 1/4" x 8" brick or Norman brick. The intent of the size limitation is to achieve a character similar to older residential buildings in New York. The streetwalls are to be relatively plain with intermediate expression lines of stone to reduce the scale of the streetwall.

3. Fenestration and Glazing

A variety of window types are encouraged to add visual interest to the streetwalls and towers. Variation from the overall building fenestration is encouraged within the two-story stone base. Bronze window glass, as well as all highly reflective glazing, are prohibited. Openings on the ground floor may be one to two stories in height. If openings are two stories high, they should be related to the larger tower massing above, the Statue of Liberty axis, a main building entrance, or a two story interior space. Windows must be set back from the exterior wall surface at least 4 inches, as measured from the surface of the masonry to the outside face of glass. Openings in the base must be framed by masonry and may not be continuous.

4. Facade Masonry Percentages

The Building Facade Masonry Percentages are to be as follows. A range of 50% - 70% masonry is allowed at the building base, located from the ground level to the top of the 2-3 story stone base. A range of 45% - 70% masonry is allowed at the building podium, located from the top of the 2-3 story stone base to a maximum height of the Battery Place streetwall and its return or 85 feet in other areas of the site. A range of 40% - 70% masonry is allowed at the building tower, located from the top of the building podium to a maximum of 400 feet.

5. Colors

The colors of metal elements, such as window frames, railings and fences etc., are to be black, silver or park-like, such as the dark green colors typically found on metal work in New York City parks. The

colors of materials that are not metal or masonry elements, such as fabric awnings, are subject to the approval of the Authority.

6. Articulated Roof Line

An articulated roof line design element or a cornice is to be made of metal and is required at the top of the Battery Place streetwall portion of the building, including the front, the returns and the back

7. Balconies

Balconies, while not encouraged, can be provided to take advantage of the views and waterfront setting. In order that they do not dominate the street walls, balconies are not to occur at or within ten feet of a building corner, nor below the sixth floor. The exterior walls of the building must contain at least 60% of the balcony perimeter. Interior balcony walls adjoining the dwelling unit shall be at least 50% glazed. Balconies with decorative metal work are encouraged to add diversity to the facade. French balconies (i.e., protruding no more than 18 inches) may be considered in locations other than the west side of the building.

8. Roof Treatments

Obtrusive features are to be minimized or screened. No highly reflective materials or contrasting colors may be used, and metal on roofs shall be painted. A roof plan must be included in the design review submission to the Authority.

9. Rooftops and Bulkheads

Upper floors should be consciously designed to create a special and interesting effect. The top of the tower portion of the building must be crowned by a dynamic shape made of materials approved by the Authority which will fully surround and hide the tower rooftop bulkhead. On the lower roof along Battery Place, the bulkheads will be particularly visible, and constitute an important part of the appearance of each building. Although designed as separate features, the bulkheads must relate to the design of the building exterior treatment in materials and decorative style. In addition, terraces and setbacks stepping up to the bulkheads are recommended.

10. Miscellaneous

The location of any vents, louvers, mechanical equipment at the perimeter of the building must be approved by the Authority. All venting must be through the roof unless otherwise approved by the Authority. Garbage and recycled materials must be stored within the

building. Perishable garbage must be stored in a refrigerated enclosure. In addition, the developer must submit for approval a detailed plan indicating the means by which garbage will be stored at and removed from all facilities, including subleased retail spaces.

H. STREETSCAPE ELEMENTS

1. Property Wall

Any side of the building that does not have a mandatory front building wall or does not have a building wall located at or within ten feet of the property line or the northern easement line, must be enclosed by a property wall which generally follows the property or building line. The enclosure must be an articulated and/or perforated wall at least one story in height. This wall shall be built of stone, masonry or ornamental iron, or a combination of these materials. The area behind this enclosure shall be landscaped.

2. Signage/Displays

Signage is to be part of a coordinated design program typeface, graphics and color. All signage is subject to the approval of the Authority. Signage may only include the name of the establishment in which it is located. Window displays may include merchandise only and may not include signage. The backs of interior merchandise displays must not be visible from the exterior.

3. Marquees

Stainless steel marquees are required for hotel entrances and for the entrance to the Public Amenity Space.

I. OPEN SPACE GUIDELINES (See *Figure I.7*)

Due to the prominent location of Block 1 at the southern end of Battery Park City, these guidelines for the Public Open Space and Sidewalks have been developed to clarify the design intent, programmatic requirements, and appropriate materials for the site. Design treatment for the Sidewalks shall be consistent with the Streetscape Plans and Sections attached as *Figure I.7*. Any special or distinctive sidewalk paving or modifications to the treatment for the Sidewalks indicated in *Figure I.7* must be approved by the Authority.

The Authority has agreed to permit the developer for Block 1 to design the Public Open Space, utilizing programmatic and design criteria

supplied below, but such design shall be subject to review and approval by the Authority. The design of the Public Open Space is to be consistent with the quality of design and materials used in Battery Park City public spaces.

The Public Open Space must be open to the public, at a minimum, during the same hours as Wagner Park is open.

The Public Open Space and the Sidewalks are included in Tenant's Civic Facilities (defined in the Ground Lease) and shall be constructed and maintained by developer as set forth in the Ground Lease.

1. Design Intent

Approached from the Battery, the Public Open Space is the gateway to the southern residential neighborhood. It must therefore provide a level of quality and character that is representative of Battery Park City. The design of the open space should reinforce the context of the Robert F. Wagner Jr. Park and its axis with the Statue of Liberty, the curvature of Battery Place, and the smaller scale of Little West Street. The design should be consistent with the design vocabulary, materials, pedestrian circulation and public amenities provided at Battery Park City.

The Public Open Space open space will serve the users of the building as well as the general public. Along the Public Open Space, two pedestrian and visual links should be reinforced: 1) the Statue of Liberty axis to provide a link between the park and the hotel site, and 2) the east-west connection between Battery Place and Little West Street along the building's south facade.

The Public Open Space must be inviting to the public. The entire length of the Public Open Space along the Battery Place side shall contain steps designed for circulation and public seating. The Little West Street edge will contain a ramp facilitating physical and visual access to the Public Open Space. The Public Open Space must balance the adjacent large areas of pavement with a landscape of trees and plantings. The Public Open Space shall contain an artwork of significant vertical scale, made of quality materials. The design of the artwork and the artist is subject to the Authority's approval.

2. Vehicular Access

No vehicular access is permitted.

3. Pedestrian Circulation

Public access is required directly from the Public Open Space to the lobby.

4. Service

No building service access or storage permitted.

5. Permitted Uses

Passive park uses are permitted. An outdoor cafe facility is permitted in the Public Open Space. Seating for the general public not using the café is required. The number and placement of tables and chairs both for cafe patrons and for the general public will be subject to the approval of the Authority.

6. Plantings and Trees

Landscaping, including type, number and placement of plant material, is subject to the approval of the Authority.

7. Paving

Granite paving, or other high-quality, durable paving materials approved by the Authority, is required in the Public Open Space.

8. Site Furnishings

All tables, chairs, railings and other furnishings are subject to approval by the Authority. Trash receptacles are permitted.

9. Materials

Existing materials used in the BPC Park System are preferred for materials not expressly described in these Design Guidelines.

10. Lighting

Pedestrian-scaled fixtures using a white light source are required in the Public Open Space. The lighting must be compatible with the adjacent park and street light fixtures. The Authority will provide lighting for all streets and sidewalks.

11. Other Public Amenities

Distinctive water features are required in the Public Open Space and must be designed to be operable for a minimum of 7 months each year. The water features must be designed to be attractive when not operating.

All visible surfaces (except hardware components) must be covered in stone, including the inside of the water basins. The design of such water features is subject to the review and approval by the Authority.

No permanent kiosks are permitted.

III. ADMINISTRATIVE FRAMEWORK

1. Submission Requirements

In order to ensure that development is in compliance in intent and quality with the 1979 Master Plan Report and these Design Guidelines, and consistent with the Environmental Impact Statement and the Memorandum of Understanding between the City and State of June 6, 1980, approvals by the Authority will consist of:

a. Approval of Developer's selection of Architect(s) and engineers.

b. Review and approval of the developer's plans and specifications for each phase (pre-schematics, schematics, design development, and construction documents) through a design review process. Each submission must be in substantial conformance with the prior submission as approved. In each submission, the Architect must note any change from the previous submission, and include a summary of such changes, in a letter with the submission; and include a summary of such changes, in a letter with the submission with the submission. In general, the Authority will honor any approvals given in a previous stage.

The developer must submit information in drawings 24 x 36 inches bound and numbered for each step of the review and approval process. Where alternate scales are shown, the Authority will direct which scale to use in each case. Zoning and gross square feet calculations must be provided with each submission.

The developer must submit the following information for review and approval.

b.1. Pre-Schematics

- Conceptual site plan.
- Conceptual ground floor plan indicating uses, access, and entries.
- Conceptual second floor plan indicating uses and circulation.
- Conceptual sections.

- Conceptual elevations of street façades.
- Massing model.

b.2. Schematics

- Site plan showing all surrounding streets and indicating building footprint, entries, access and landscaped areas. Scale: 1" = 16' or larger.
- Zoning drawings and calculations.
- Basement or Cellar Plan(s) showing all parking Scale 1"= 8'.
- Ground floor, plan. Scale 1" = 8'.
- Second Floor plan. Scale 1" = 8'.
- Typical floor plans. Scale: 1" = 8'.
- Roof Plans showing all mechanical equipment. Scale 1" = 8'.
- Concept plan for open space treatment.
- Single line drawings showing mechanical, electrical and plumbing systems and connections.
- Building section in both directions. Scale 1" = 8' or 1'= 16"
- Building elevations indicating all materials. Scale: 1" = 8' or 1" = 16'.
- Front-wall elevations showing floors one through four indicating material treatment and planer changes in inches. Scale 1" = 4'.
- Building top and bulkhead elevation showing top expression zones, cornice and bulkhead indicating materials and planer elevation changes in inches. Scale 1" = 4
- Outline specifications for basic systems and exterior materials, including colors.
- Rendered elevations representing material and color choices.
- Model indicating building massing, in off-white Strathmore board, for insertion into the Battery Park City site model. Scale: 1" = 20'.

- Plan for material mock-up to be built as part of Design Development submission.
- Written list of all deviations from Design Guidelines.

Drawings and models should adequately show the architectural treatment for areas of special concern including roof profiles, building corners, required streetwall height expression and any garage rooftops visible from the apartments above.

b.3. Design Development

To verify conformance with the previously approved submission, a review and approval of the developer's Design Development Plans and specifications is required. Developer must list in writing all changes from approved Schemtatic Design. The developer must submit the following information:

- Zoning drawings and calculations.
- Floor plans, building sections and elevations. Scale: 1" = 8' or 1" = 16'. (Site Plan Scale: 1" = 16' or larger.)
- Additional plans, sections and elevations for typical exterior details, at appropriate scale.
- Detail plans of open spaces.
- Detail plans for special facilities and/or special areas. Scale as appropriate.
- Structural, mechanical, electrical, and plumbing drawings.
- Reflected ceiling plan for any arcades.
- Technical specifications.
- Samples of all exterior and surface materials.
- Model to be updated.
- Before approval of design development, a mock-up on the site is required. It must illustrate the use and colors of bricks, stone, mortar, and a window unit. The mock-up must be of sufficient scale to adequately evaluate the proposed materials.

b.4. Construction Documents

Review and approval of the developer's final contract plans and specifications for each building or facility are required to verify conformance with previously approved submissions. Developer must list in writing all changes from previously approved submissions. The developer must submit the following information:

- Final Plans and Construction Documents, including all plans, elevations and details as per Design Development Plans and Specifications.
- Model to be updated.
- Final specifications. Samples of all exterior and surface materials.

The developer, on receipt of the Authority written approval of the final contract plans, is responsible for obtaining all required approvals from the Buildings Department and any other city agencies.

2. Changes to Plans or During Construction

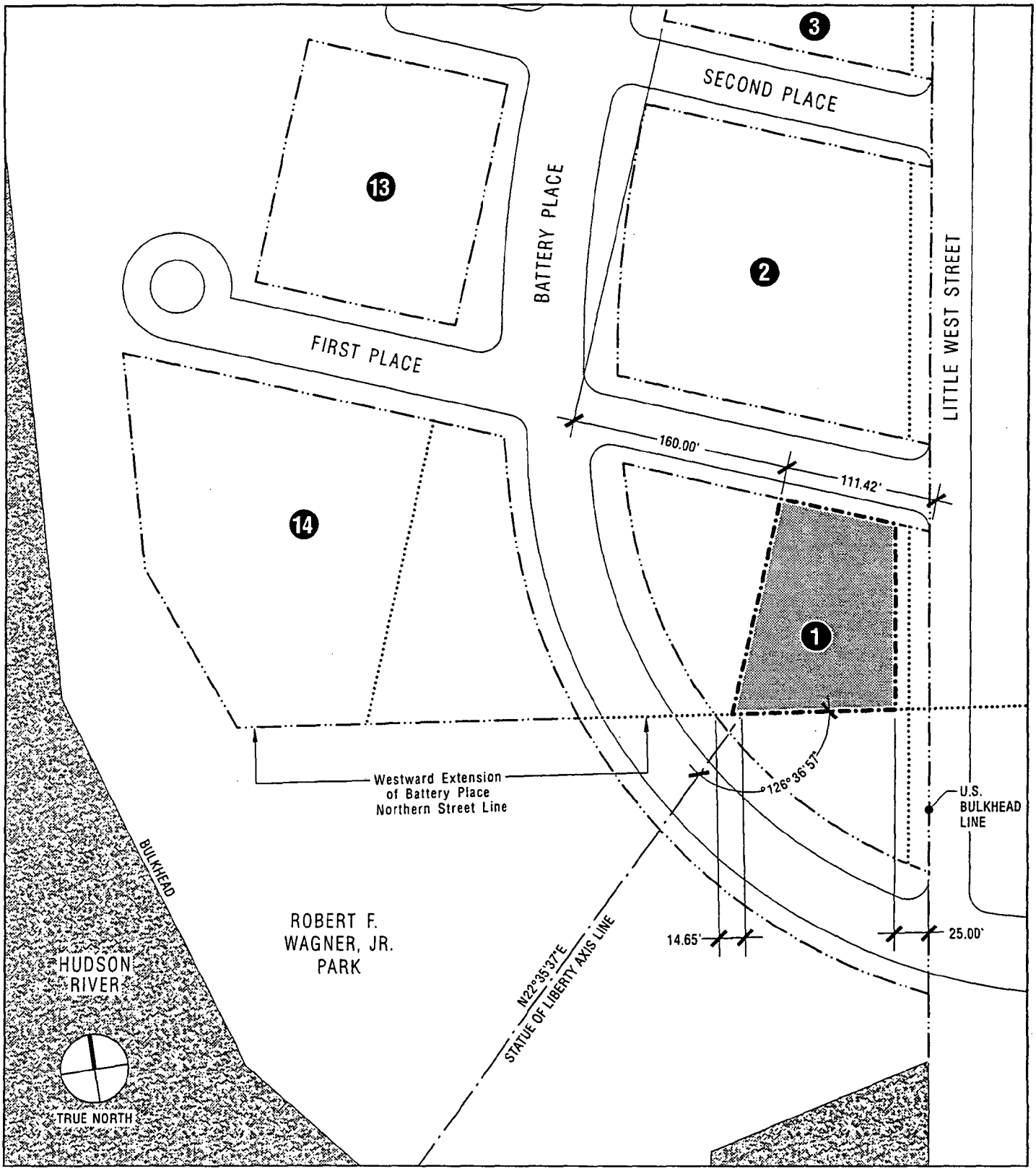
Changes to the final Contract Documents including exterior materials and specifications, must be submitted to the Battery Park City Authority for approval prior to construction.

3. Review

The Authority will review all submissions in a prompt and timely manner. The Authority will maintain field personnel to observe construction methods and technologies and to verify that construction is proceeding in accordance with the official documents.

4. As-Built Drawings

Developers are required to submit a record set of building drawings in a CAD format to be designated.



Block 1: Site Context

Figure I.1

Zoning Requirements

- Tower Location
- Tower Limit Line
- 160.00' Dimension (feet)

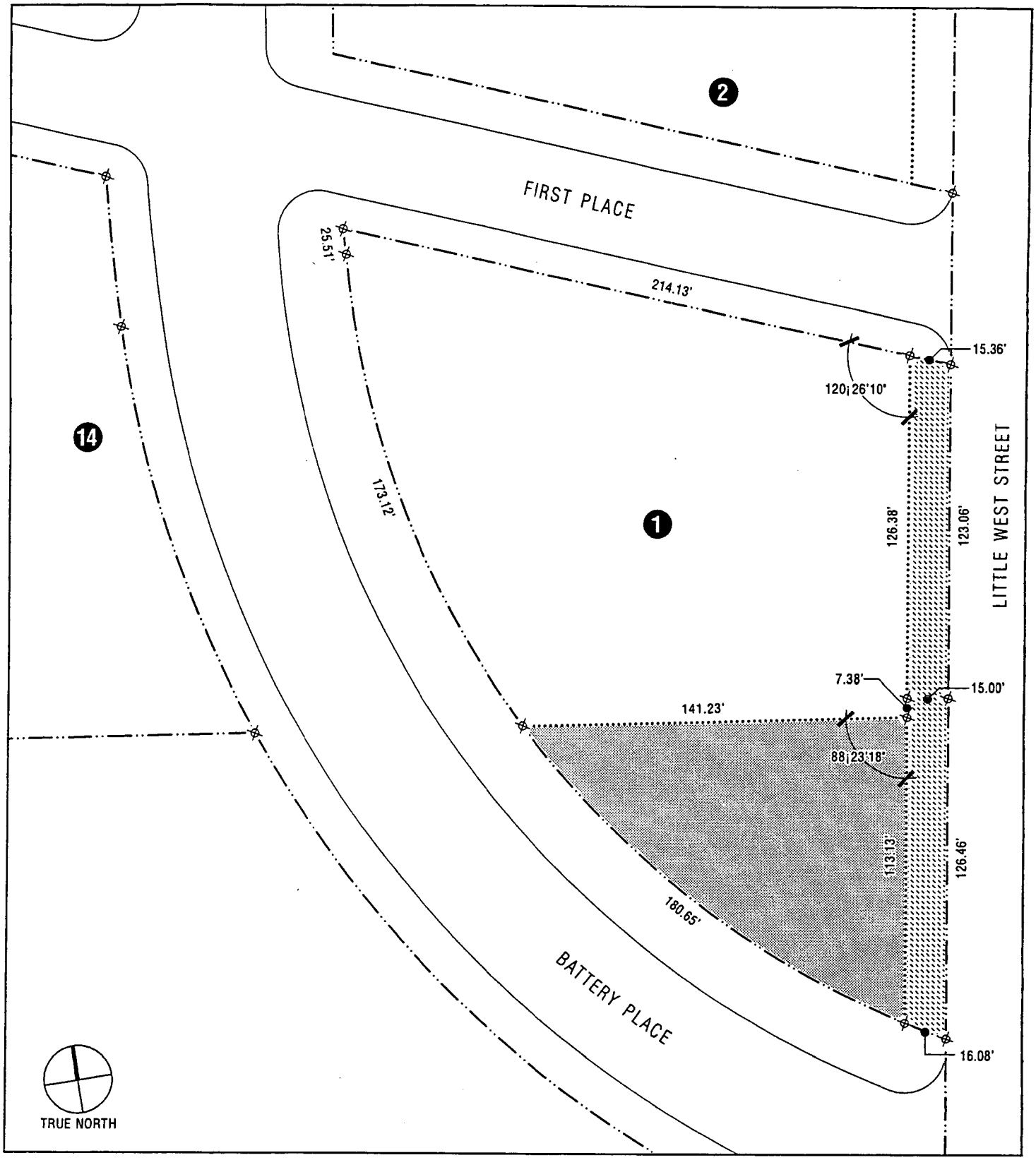
Design Guidelines & NYC Mapping

- Easement Line
- Statue of Liberty Axis Line
- Property Line
- 1 Block Number

0 50 100

Beyer Blinder Belle
Architects & Planners LLP

NOTE: Refer to NYC Zoning Resolution, Article VIII, Chapter 4, Appendix 2.2, *Special Heights Locations* and City Map Acc. No. 30071 dated September 28, 1981, revised November 5, 1981 and BPC Block 1 Survey prepared by Vollmer Associates, *Alignment Study View Corridors*, dated February 23,1998 for additional information. Final field conditions to be verified by Developer.



Block 1: Property Description

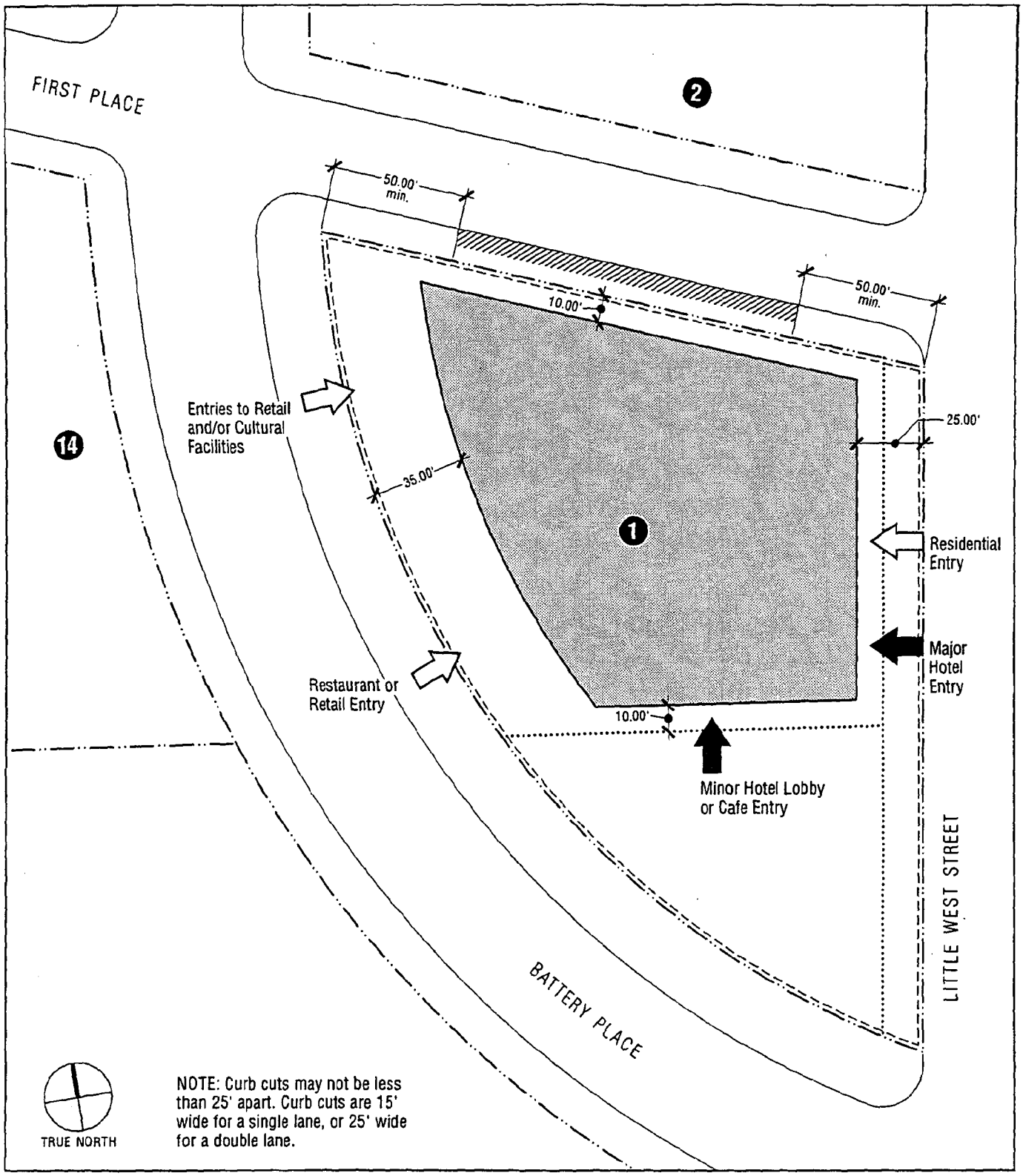
Figure I.2

Property Line
Easement Line
Open Space Easement
Sidewalk Easement
16.08' Dimension (approx. feet)
1 Block Number

0 25 50

Beyer Blinder Belle
Architects & Planners LLP

NOTE: This figure is a supplement to, Battery Park City Block 1 Survey prepared by Vollmer Associates, *Topographic Survey Plan*, dated September 22, 1997; and Battery Park City Block 1 Survey prepared by Vollmer Associates, *Alignment Study View Corridors*, dated February 23, 1998. Final field conditions to be verified by the Developer.



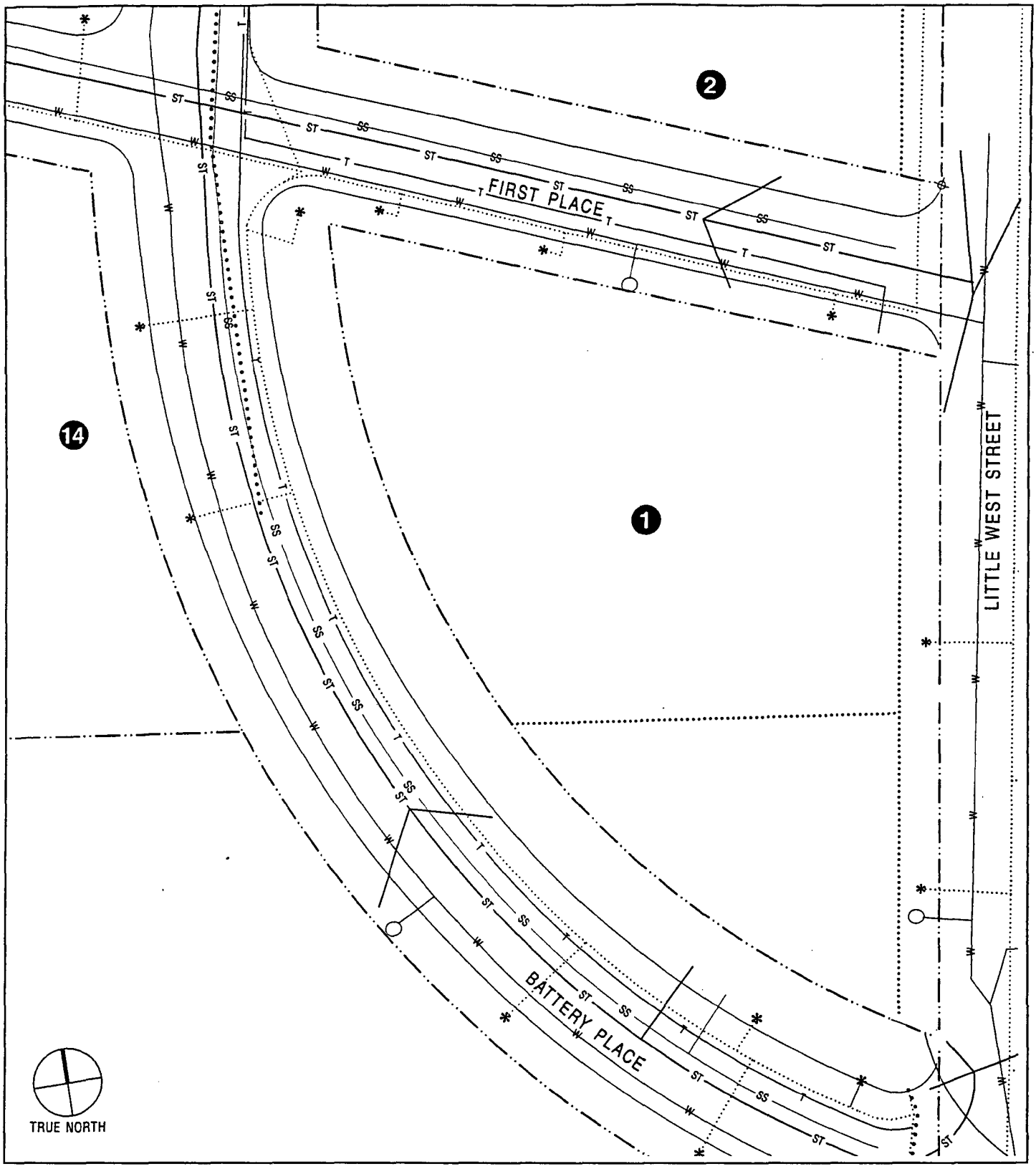
Block 1: Permitted Entrances and Curb Cuts

Figure I.3

Property Line
Easement Line
1 Block Number
Permitted Curb Cut Zone
Permitted Above-Grade Parking Zone
Permitted Below-Grade Parking Zone
Mandatory Building Entrance
Permitted Building Entrance

0 25 50

Beyer Blinder Belle Architects & Planners LLP



Block 1: Existing Utility Plan

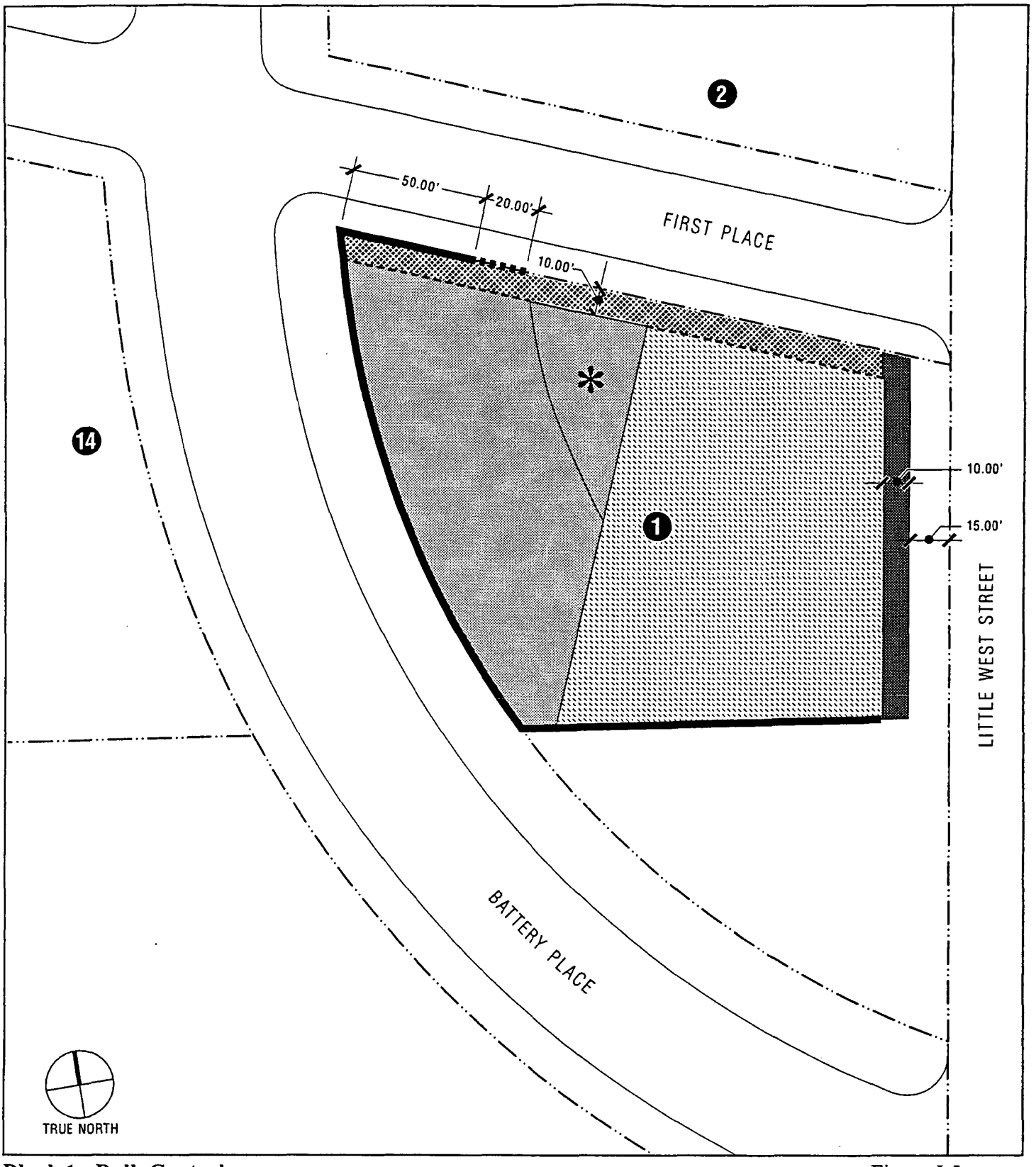
Figure I.4

—W— Water
—○ Fire Hydrant with Valve
—SS— Sanitary Sewer
—ST— Storm Sewer
—T— Telephone
····· Electric
····* Street Light
1 Site Number
—·—·— Property Line
····· Easement Line

0 25 50

Beyer Blinder Belle
Architects & Planners LLP

NOTE: Refer to Composite Utility Plans by Chu & Gassman Consulting Engineers dated March 1999.



Block 1: Bulk Controls

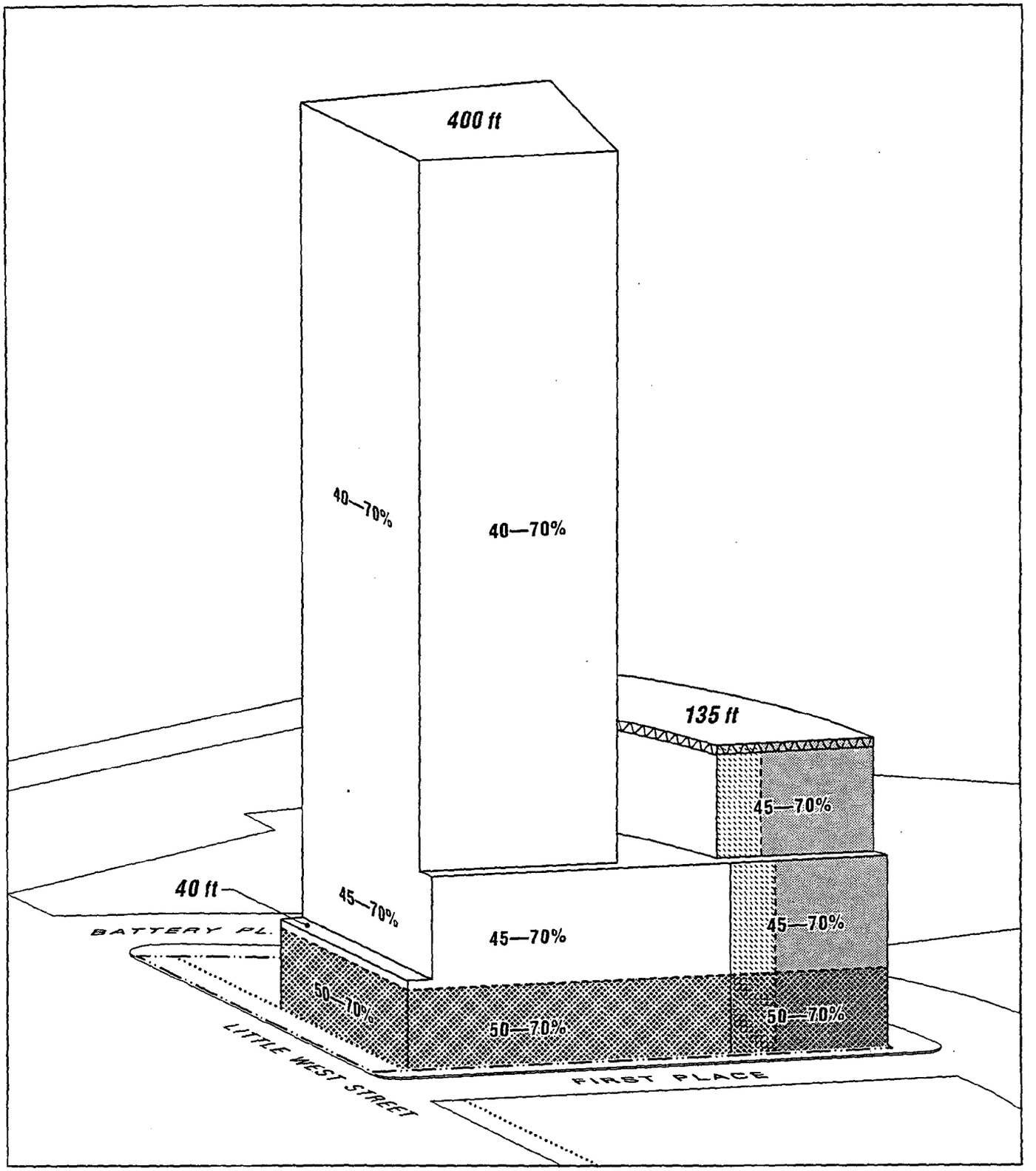
Figure I.5

- Property Line
- Maximum 400' Bldg. Height
- 110'-135' Bldg. Height
- Maximum 85' Bldg. Height
- Maximum 40' Bldg. Height
- 1 Block Number
- 10.00' Dimension (feet)
- Mandatory 85' Streetwall
- Mandatory 10' Setback at 85' Height or Lower

0 25 50

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* NOTE: Maximum building height in this area as permitted by New York City Zoning Resolution.



Block 1: Maximum Building Envelope and Architectural Controls – *View towards Southwest*

Figure I.6a

Zoning Requirements

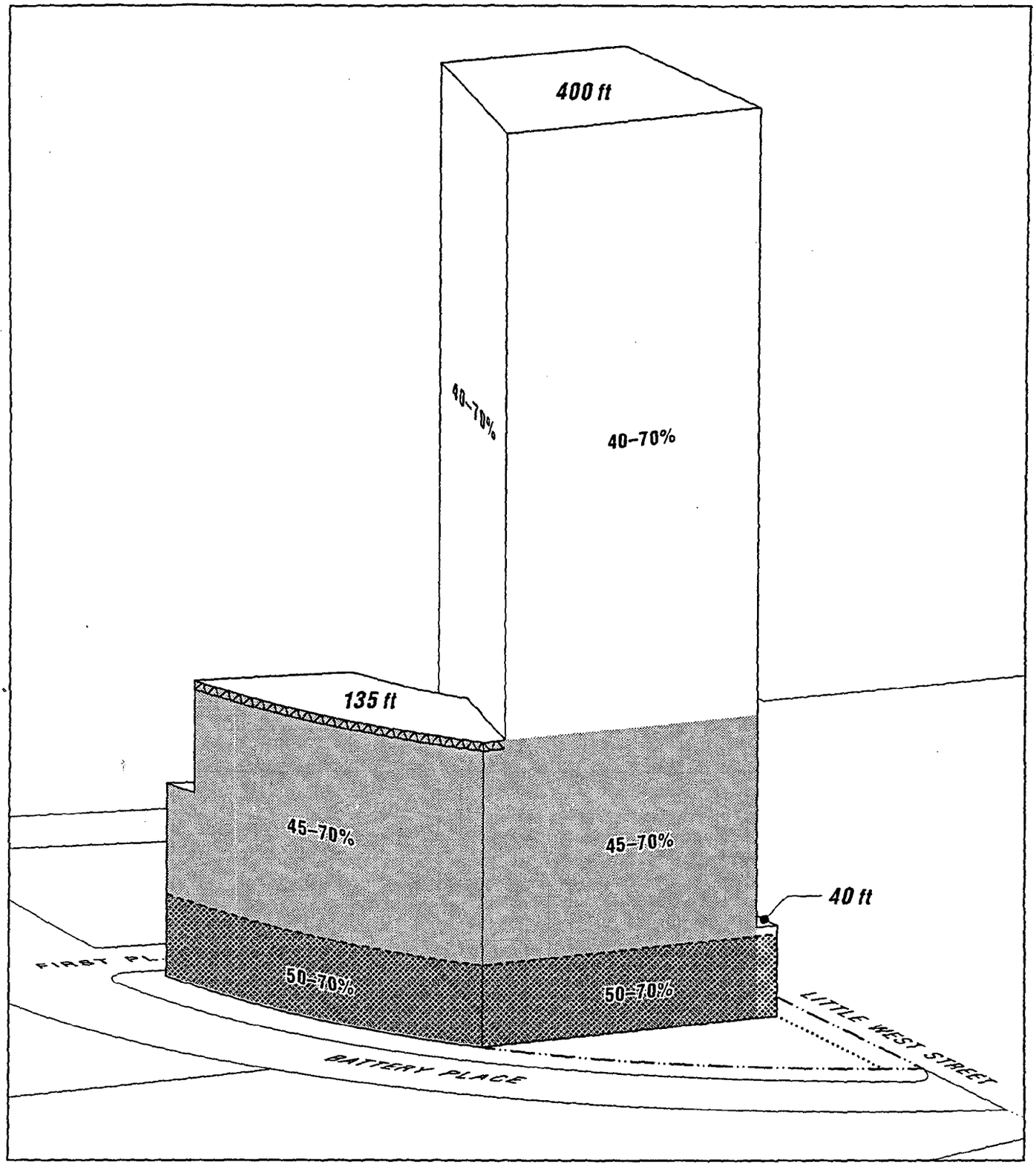
- Mandatory Front Bldg. Wall
- Optional Front Bldg. Wall
- 85' Maximum Building Height

Design Guidelines

- 2-3 Story Stone Base
- Articulated Roof Line
- 50–70% Building Facade Masonry Percentages
- Property Line
- Easement Line

0 30 60

Beyer Blinder Belle
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Block 1: Maximum Building Envelope and Architectural Controls – *View towards Northwest*

Figure I.6b

0 30 60

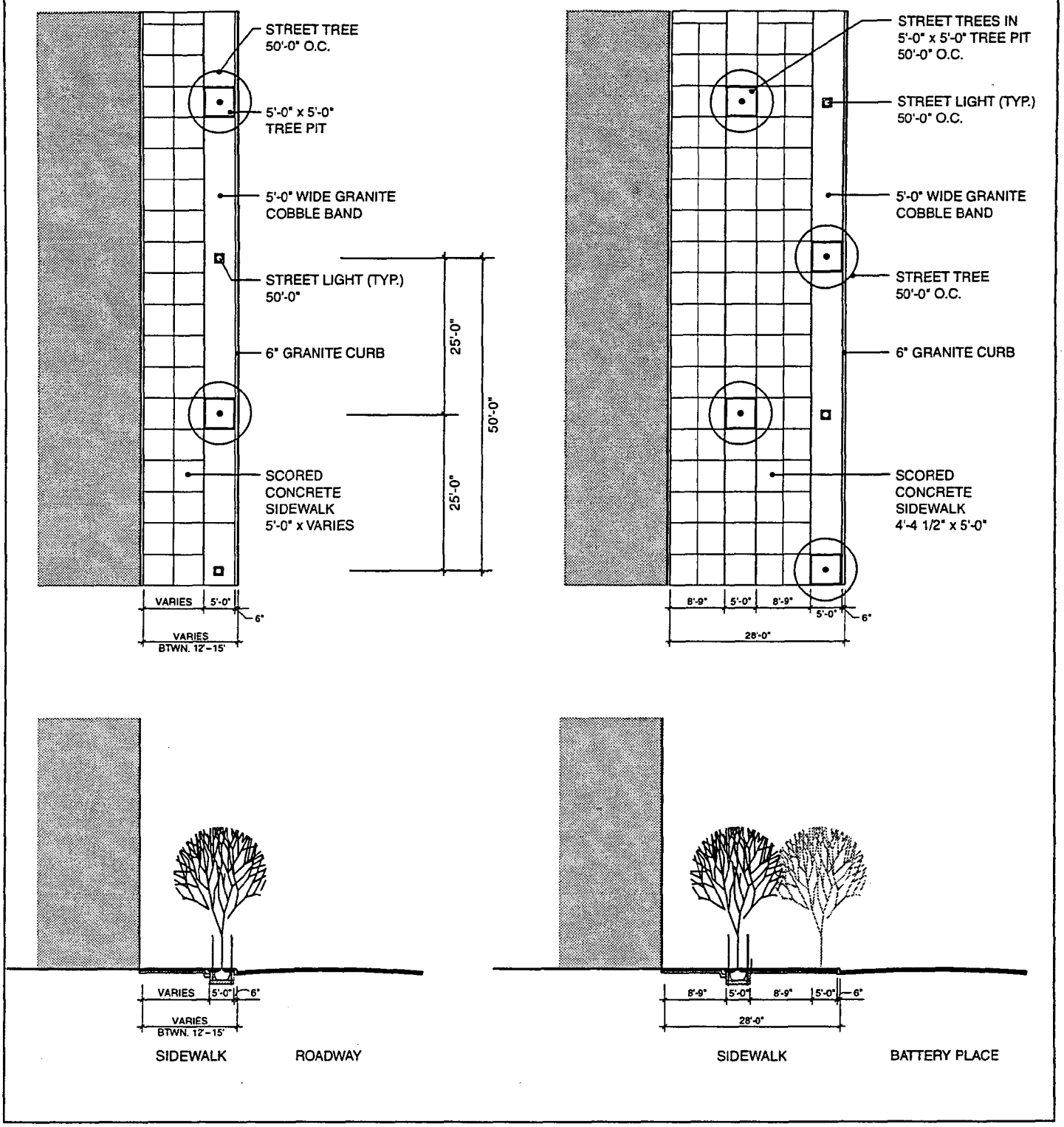
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Zoning Requirements

- Mandatory Front Bldg. Wall
- **85'** Maximum Building Height

Design Guidelines

- 2-3 Story Stone Base
- Articulated Roof Line
- **50–70%** Building Facade Masonry Percentages
- Property Line
- Easement Line



Streetscape Plans and Sections

Figure I.7

NOT TO SCALE

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EXHIBIT D

Hotel Operator Management Agreement (together with memorandum)

Date: January 1, 2000

MEMORANDUM

This Memorandum lists the provisions that need to be incorporated in the Hotel Operator Management Agreement or by which such agreement shall be modified as a pre-condition of the approval thereof by Landlord.

For purposes of the Lease, the "Hotel Operator Management Agreement" in effect on the date hereof is comprised of the following documents (other than item 5), true and complete copies of all of which were delivered to the Landlord on December 29, 1999:

1. Operating Agreement between Millennium BPC Development LLC ("Millennium") and the Ritz-Carlton Hotel Company, L.L.C. ("Ritz") dated as of August 31, 1999 (the "Agreement");

2. Memorandum of Operating Agreement dated as of August 31, 1999 between Millennium and Ritz (the "Memorandum");

3. Letter Agreement from Ritz to Millennium dated August 31, 1999;

4. Pre-Commencement Agreement between Millennium and Ritz dated August 31, 1999 (the "Pre-Commencement Agreement");

5. Condominium Submanagement Agreement between Ritz and Millennium Partners BPC Management LLC dated August 31, 1999 (the "Submanagement Agreement");

6. Condominium Marketing License Agreement between Ritz and Millennium dated as of August 31, 1999 (the "License Agreement");

7. Letter Agreement dated August 31, 1999 from Millennium to Ritz.

The following are the required amendments:

1. Ritz shall evidence its approval of the Lease, as required in the definition of the "Ground Lease" in the Agreement.

2. The Hotel Operator Management Agreement shall contain express provisions to the effect that (x) until the Condominium Date, Millennium has a leasehold and not a fee interest in the Hotel Portion, and (y) after the Condominium Date, all of the contractual agreements between Ritz and Millennium (or its successors or assigns) comprising the Hotel Operator Management Agreement are with Millennium (or its successors or assigns) solely in its capacity as a sublessee under the Hotel Unit Sublease, and expressly not as an owner of the Hotel Unit (unless Landlord and Ritz shall have executed a subordination and non-disturbance agreement in which case the Hotel Operator Management Agreement may be with the Hotel Unit Owner, if and only to the extent expressly permitted by Landlord). In addition, the Hotel Operator Management Agreement shall expressly state that it is subject and subordinate in all respect to the Ground Lease and, upon the Condominium Date, to the Hotel Unit Lease and the Hotel Unit Sublease.

3. The Hotel Operator Management Agreement shall include a provision to the effect that, in the event of the termination of the Ground Lease, or after the Condominium Date, the termination of the Hotel Unit Sublease, Ritz (and its successors or assigns) shall at the election of the Landlord (and its successors or assigns) attorn to and recognize the Landlord (or its successor and assigns) as a party to the Hotel Operator Management Agreement in lieu of Millennium (or its successors or assigns).

4. The insurance provisions of the Agreement and the Submanagement Agreement and the other agreements, if any, shall be amended to provide that Landlord (and its successors or assigns) shall be added as additional insured on any liability policies required to maintained by Ritz, and Landlord shall be named loss payee on any property or casualty policies, as its interest may appear. The foregoing provisions shall not be deemed to waive any applicable insurance requirements under the Ground Lease or the Hotel Unit Sublease. The insurance, damage, destruction and condemnation provisions of the Agreement, the Submanagement Agreement and the other agreements shall expressly state that they are subject to the provisions of the Ground Lease and the Hotel Sublease.

5. Ritz shall give notice of any default under the Hotel Operator Management Agreement and the Submanagement Agreement to Landlord and allow Landlord to cure any default by Millennium (or its successors or assigns) thereunder. The benefit of the provisions of Section 12.16 of the Submanagement Agreement and Section 8.4 of the License Agreement, and any corresponding provisions contained in any other agreement comprising the Hotel Operator Management Agreement, shall also be extended to Landlord.

6. The Data Addendum of the Agreement shall be conformed to the provisions of the Ground Lease.

7. The Memorandum shall expressly recite in substance the provisions set forth in Sections 2 and 3 above, and shall in no event be filed or recorded until the Completion of the Hotel Portion.

8. The Submanagement Agreement shall provide that it shall not be effective unless and until Ritz shall have executed an agreement confirming that it shall be bound by the Management Agreement Subordination, Recognition and Attornment Agreements as required by the Ground Lease.

9. The right of first offer negotiation provision contained in Section 13.2 of the Agreement shall not apply to any transfers to Landlord, including, without limitation, the execution of the Hotel Unit Lease or the exercise by Landlord of any of its rights thereunder, including the purchase option with respect to the Hotel Unit contained therein, and after the Condominium Date, shall apply only to assignments by the Hotel Unit Sublessee of its interest under the Hotel Unit Sublease.

* * *

At the election of Landlord, none of the provisions of the Hotel Operator Management Agreement and the Submanagement Agreement shall be effective unless and until the parties to such agreements enter into amendments, in form and substance reasonably satisfactory to Landlord, implementing the foregoing provisions.

In addition, the following modifications to the Agreement are not required but are deemed to be approved by Landlord:

1. an increase in the base management fee to 4%; and

2. a change in the maximum term of the Agreement (with extensions) up to the end of the term of the Hotel Unit Sublease.

OPERATING AGREEMENT

between

MILLENNIUM BPC DEVELOPMENT LLC

as Owner

and

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

as Operator

covering The Ritz-Carlton, Downtown New York

DATED: August 31, 1999

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OPERATING AGREEMENT

THIS OPERATING AGREEMENT is made as of the 31st day of August 1999 ("Effective Date") between:

Millennium BPC Development LLC, a limited liability company organized and existing under the laws of New York, with its principal place of business at c/o Millennium Partners LLC, 1995 Broadway, Third Floor, New York, New York 10023 as "Owner;"

and

THE RITZ-CARLTON HOTEL COMPANY, L.L.C., a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 3414 Peachtree Road, N.E., Suite 300, Atlanta, Georgia 30326, U.S.A., as "Operator."

WITNESSETH:

WHEREAS, Operator is experienced in the management and operation of hotels, directly and through affiliated entities; and

WHEREAS, Owner will construct the Hotel, and Owner desires to have the Hotel operated by Operator for Owner in accordance with the terms and conditions and subject to the limitations contained in this Agreement.

NOW, THEREFORE, Owner and Operator covenant and agree as follows:

ARTICLE 1.

DEFINITIONS, TERMS AND REFERENCES

1.1. Definitions. In this Agreement (including any addenda or exhibits), the following terms have the following meanings:

Additional Invested Capital shall mean the cumulative total, as of any given date during the Operating Term, of the following: (i) any Operating Loss funded by Owner pursuant to Section 5.3 of this Agreement provided that there is an Operating Loss for the entire Fiscal Year (contributions made by Owner pursuant to Section 5.3 during any Fiscal Year in which

there is not an Operating Loss for the entire Fiscal Year shall not be included as Additional Invested Capital); (ii) any contributions by Owner for Routine Capital Expenditures or Condominium Routine Capital Expenditures pursuant to Section 5.4(b) of this Agreement, where such contributions are in excess of the Reserve or in excess of any amount deposited into the Reserve pursuant to the Fee and Reserve Addendum; (iii) any Major Hotel Building Expenditures or Condominium Major Capital Expenditures; and (iv) any Excess Working Capital (provided that, if there is Excess Working Capital with respect to a given Fiscal Year, such Excess Working Capital shall be added to Additional Invested Capital for that Fiscal Year only).

Adjusted House Profit means, for any Fiscal Year, Gross Revenues minus the sum (without duplication) of (i) Gross Operating Expenses, (ii) Impositions, (iii) scheduled contributions to the Reserve in accordance with the Fee and Reserve Addendum, as the same may be adjusted pursuant to Section 5.4 hereof, (iv) all insurance costs under Section 8.2, (v) payments required under CC&Rs which have been Approved by Owner and by Operator, (vi) the Base Fee and (vii) the Ground Rent; but before any debt service or Major Hotel Building Expenditures in connection with the Hotel.

Affiliate means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, of the power to vote 50% or more of the voting stock of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise. For purposes of this Agreement, Marriott International, Inc. shall be deemed to be an Affiliate of the Operator.

Agreement means this Operating Agreement, as it may be amended or supplemented from time to time.

Annual Operating Projection means all the schedules containing the annual operating projection for the Hotel and certain other items prepared and submitted by Operator to Owner pursuant to Section 4.1.

Approval, Approve, or Approved means prior written approval or consent, which consent shall not be unreasonably withheld, conditioned or delayed. Unless a different time period is expressly provided for herein, the failure of either party to respond (either affirmatively or negatively) in writing to a written request for Approval by the other party within thirty (30) days after the date of such request shall be deemed to be an Approval by such non-responding party. Notwithstanding anything to the contrary contained herein, in the event Owner is required to obtain the approval of the ground lessor under the Ground Lease prior to Owner's Approval and ground lessor does not grant such approval (or is deemed to have not granted such approval)

then Owner shall be deemed to have not granted its Approval, and such non-Approval shall be deemed reasonable; provided that Owner shall use good faith efforts to obtain, where required, ground lessor's approval.

Approved Annual Operating Projection shall have the meaning set forth in Section 4.2(a).

Available Cash Flow means, for any Fiscal Year, Adjusted House Profit minus the Owner's Priority.

Base Fee means an amount specified in the Fee and Reserve Addendum.

CC&Rs means covenants, conditions, or restrictions, including reciprocal easement agreements or cost-sharing arrangements, applicable to the Hotel or the operation of the Hotel (but shall not include any of the Condominium Instruments).

Commencement Date means the first day on which the Hotel is open for business.

Common Elements shall have the meaning set forth in Section 8.1.A(1) hereof.

Competitive Hotel shall mean a hotel (or extended stay residence, residential development or time share) that uses the words "Ritz-Carlton" as part of its name.

Condominium means the condominium regime of which the Hotel shall be a separate unit. The Condominium shall have a name that is Approved by Owner and Operator (it being agreed that it shall not be unreasonable for Operator to disapprove any name that incorporates the Ritz-Carlton Rights). The Condominium shall consist of one (1) building, containing the Hotel, retail space, the Residences and certain general common elements to be shared among the various condominium components (or in certain cases to be used exclusively by such components).

Condominium Association means the condominium association, board of managers or unit owners association or other legal entity formed pursuant to the Condominium Instruments to be the governing body of the Condominium.

Condominium Concierge Services means those certain Hotel-related services that Operator shall provide to the Residences in accordance with Section 2.2.(b) of this Agreement.

Condominium Expenses means those expenses incurred by or on behalf of the Condominium and which are assessed to the Hotel Unit pursuant to the Condominium Instruments.

Condominium Instruments means the Condominium declaration, articles, by-laws, plats and plans and other operating documents (but not including the Condominium Offering Plan) under which the Condominium is organized and operated. The parties agree that none of the Condominium Instruments which are to be recorded in the land records shall contain the name "Ritz-Carlton" or any of the other Ritz-Carlton Rights unless same are approved by Operator in Operator's sole discretion. All use of the name "Ritz-Carlton" or any of the other Ritz-Carlton Rights in any non-recorded Condominium Instruments or in the Condominium Offering Plan shall be subject to Operator's Approval.

Condominium License Agreement means that certain "Condominium Marketing License Agreement" dated of even date herewith between Owner and Operator.

Condominium Major Capital Expenditures means those Condominium Expenses which are expenses that would have been deemed Major Hotel Building Expenditures hereunder had the Hotel been a free-standing, self-contained building with related facilities, and which are not in the nature of Condominium Operating Expenses or Condominium Routine Capital Expenses.

Condominium Manager shall have the meaning set forth in Section 8.1.D.

Condominium Offering Plan shall mean that certain document which shall be prepared by Owner (subject to the Approval of Operator) setting forth the terms and conditions of the proposed offer of the Residences for sale by Owner (or one of its Affiliates) to the public. The Condominium Offering Plan will clearly state that neither Operator nor any of its Affiliates is a sponsor or broker of such offering, nor has any responsibility therefor.

Condominium Operating Agreement means that certain "Condominium Submanagement Agreement" dated of even date herewith between Millennium Partners BPC Management LLC and Operator for the operation of the Condominium.

Condominium Operating Expenses means those Condominium Expenses which are expenses that would have been deemed Gross Operating Expenses hereunder had the Hotel been a free-standing, self-contained building with related facilities, and which are not in the nature of Condominium Routine Capital Expenses or Condominium Major Capital Expenditures.

Condominium Routine Capital Expenses means those Condominium Expenses which are expenses that would have been deemed Routine Capital Expenditures hereunder had the Hotel been a free-standing, self-contained building with related facilities, and which are not in the nature of Condominium Major Capital Expenditures or Condominium Operating Expenses.

Covered Period shall have the meaning set forth in Section 3.3(g).

CPI means the "Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, U.S. Cities Average (1982-1984=100)" published by the United States Bureau of Labor Statistics, or any revisions or replacement thereto subsequently published, with any necessary adjustments. Except as otherwise specifically stated herein, whenever a number or an amount is required to be "adjusted by the CPI," or similar terminology, such adjustment shall be equal to the percentage increase or decrease in the CPI for the month in which such adjustment is to be made, as compared to the CPI for the month in which the Effective Date occurred (or, if specifically set forth in the applicable provision, any other month).

Cure Amount shall have the meaning set forth in Section 3.3(g).

Data Addendum means the Data Addendum attached hereto.

Effective Date has the meaning ascribed to such term in the Preamble.

Environmental Laws means any rules, regulations, laws, and/or other enactments now or hereafter in effect and applicable to the Premises or to activities carried on with respect to the Premises (whether of a national, regional, state, or local government, agency, or instrumentality), dealing with the use, generation, treatment, storage, disposal, or abatement of Hazardous Materials.

Event of Default means any of the events described in Section 11.1.

Excess Working Capital shall mean any excess of (i) the average outstanding level of Working Capital throughout an entire Fiscal Year, over (ii) Seven Hundred Fifty Thousand Dollars ($750,000). The amount of Excess Working Capital with respect to any given Fiscal Year shall be computed as of the end of such Fiscal year.

Expert means an independent nationally recognized consulting firm or individual who is qualified to resolve the issue in question, and who is appointed in each instance by agreement of the parties. In the event either party calls for an Expert determination pursuant to the terms hereof, the parties shall have ten (10) days from the date of such request to mutually agree on one (1) nationally recognized hospitality industry consulting firm or individual as the Expert and, if they fail to agree, each party shall have an additional ten (10) days to each select one (1) nationally recognized hospitality industry consulting firm or individual as the Expert and within ten (10) days of such respective selections, the two (2) respective firms and/or individuals so selected by each of the parties hereto shall select another such nationally recognized consulting firm or individual to be the Expert. If either party hereto fails to make its respective selection of a firm or individual within the ten (10) day period provided for above, then the other party's selection shall be the Expert.

Extraordinary Event means any of the following events, regardless of where it occurs or its duration: acts of nature without the interference of any human agency (including hurricanes, typhoons, tornados, cyclones, other severe storms, winds, lightning, floods, earthquakes, volcanic eruptions, disease, epidemic and certain fires and explosions); fires and explosions caused wholly or in part by human agency; acts of war; riots or other civil commotion; terrorism (including hijacking, sabotage, bombing, murder, assault and kidnapping); strikes or similar labor disturbances; shortage of critical materials or supplies; action or inaction of governmental authorities having jurisdiction over the Hotel (including the imposition of restrictions on room rates, Hotel Employee wages or other material aspects of operation); and any other events beyond the control of Owner or Operator.

Fee and Reserve Addendum means the Fee and Reserve Addendum attached hereto.

Final Candidate shall have the meaning set forth in Section 2.4(b).

First Candidate shall have the meaning set forth in Section 2.4(b).

First Notice shall have the meaning set forth in Section 2.3(e).

Fiscal Year means a fiscal year which ends on December 31. The first Fiscal Year shall be the period commencing on the Commencement Date and ending on December 31 of the year in which the Commencement Date occurs. The words "full Fiscal Year" means any Fiscal Year containing not fewer than 365 days. A partial Fiscal Year after the end of the last full Fiscal Year and ending with the expiration or earlier termination of the Operating Term shall constitute a separate Fiscal Year.

Fixed Asset Supplies means supply items which constitute "Fixed Assets" under the Uniform System, including china, glassware, silverware, miscellaneous serving equipment, linen, towels, uniforms and similar items.

Foreclosure shall mean any exercise of the remedies available to a Mortgagee, upon a default under the Mortgage held by such Mortgagee, which results in a transfer of title to or possession of the Hotel. The term "Foreclosure" shall include, without limitation, any one or more of the following events, if they occur in connection with a default under a Mortgage: (i) a transfer by judicial foreclosure; (ii) a transfer by deed in lieu of foreclosure; (iii) the appointment by a court of a receiver to assume possession of the Hotel; (iv) a transfer of either ownership or control of the Owner, by exercise of a stock pledge or otherwise; (v) if title to the Hotel is held by a tenant under a ground lease, an assignment of the tenant's interest in such ground lease; or (vi) any similar judicial or non-judicial exercise of the remedies held by the Mortgagee.

Furniture and Equipment means all furniture, furnishings, wall coverings, fixtures, equipment and systems located at, or used in connection with the Hotel, together with all replacements therefor and additions thereto, including the following: all equipment and systems required for the operation of kitchens, bars, laundry and dry cleaning facilities; office equipment; dining room wagons; material handling equipment; cleaning and engineering equipment; telephone systems; computerized accounting systems; and vehicles. Furniture and Equipment shall not include any item included in Fixed Asset Supplies or included as part of the Hotel Building.

Gross Operating Expenses means the following expenses incurred in the operation of the Hotel in accordance with the provisions of this Agreement: employee expenses and taxes set forth in Section 2.4 (including salaries, wages, bonuses and other compensation of all Hotel Employees and their social benefits, including life, medical and disability insurance and retirement benefits); expenditures described in Section 6.1; departmental expenses; administrative and general expenses; a reasonable reserve for doubtful accounts receivable as determined by Operator; the fees of accountants, consultants, attorneys and other third parties performing services permitted hereunder; the handling and service charges imposed by third parties (including Affiliates of Operator if their engagement complies with Section 2.6(c)) for procurement services; utilities; insurance to be provided by Operator under this Agreement; food; beverages; laundry service; Inventories; Fixed Asset Supplies; license fees; Group Marketing Services Expense; non-group advertising, marketing, promotion, publicity, public relations and sales; reservation systems; Condominium Operating Expenses pursuant to Section 2.2(a)(5); the operating costs of computer systems and communication lines used by the Hotel; any taxes assessed against or payable by Operator related to this Agreement or to Operator's operation of the Hotel (excluding income taxes and/or franchise taxes of Operator); all costs associated with the use of off-site parking spaces by Hotel guests or Hotel Employees that are incurred by Operator or the Hotel; and any and all other operating expenses as are reasonably necessary for the proper and efficient operation of the Hotel incurred by Operator in accordance with the provisions hereof. Gross Operating Expenses shall exclude the following expenses: excise, sales and use taxes collected directly from patrons and guests or as a part of the sales price of any goods, services or displays (such as gross receipts, admissions, cabaret or similar or equivalent taxes) and paid over to federal, state or municipal governments; any income taxes or similar taxes assessed against Operator or Owner, except as otherwise specified herein; amounts paid into the Reserve under Section 5.4 and the Fee and Reserve Addendum; Operator's Fees; Major Hotel Building Expenditures by Owner under Article 7; Condominium Major Capital Expenditures; the cost of insurance to be provided by Owner under Section 8.1; Impositions to be paid by Owner under Section 9.1; CC&Rs to be paid by Owner under Section 9.2; all costs and expenses (including engineers', attorneys' and litigation costs and expenses) to be paid by Owner under Section 13.8 with respect to removal of Hazardous Materials, compliance with Environmental Laws and indemnification of Operator; rentals paid for Furniture and Equipment unless their inclusion as Gross Operating Expenses is Approved by Operator; rent or other payments due or payable under the Ground Lease; and payments on any Mortgage. All of the

foregoing shall be determined in accordance with generally accepted accounting principles and the Uniform System. No part of Operator's central office overhead shall be deemed to be a part of Gross Operating Expenses, except to the extent such overhead is included as a part of the Group Marketing Services Expense or is otherwise provided for in this Agreement. Out-of-pocket expenses of Operator and its Affiliates incurred for the account of or in connection with the Hotel operation, including reasonable travel expenses of employees, officers and other representatives and consultants of Operator and its Affiliates, which are customary for comparable hotels and as provided in the Approved Annual Operating Projection, shall be deemed to be a part of Gross Operating Expenses, and such persons shall be afforded reasonable accommodations, food, beverages, laundry, valet and other such services by and at the Hotel without charge to such persons, Operator, or its Affiliates.

Gross Revenues means all revenues, receipts and income of any kind derived directly or indirectly by Operator from or in connection with the Hotel (including (i) revenues received by Operator or the Hotel from Hotel guests, visitors, Hotel Employees and others for the use of off-site parking and (ii) rentals or other payments from tenants, lessees, licensees or concessionaires but not including their gross receipts, and including all revenues from off-site catering and from providing Condominium Concierge Services to the Residences), whether on a cash basis or credit, paid or collected, determined in accordance with generally accepted accounting principles and the Uniform System. The term "Gross Revenues" shall not include, however: (i) funds furnished by Owner; (ii) interest accrued on amounts in the Reserve; (iii) excise, sales and use taxes collected directly from patrons and guests or as part of the sales price of any goods, services or displays (such as gross receipts, admissions, cabaret or similar or equivalent taxes) and paid over to federal, state or municipal governments; (iv) gratuities and service charges received by Hotel Employees; and (v) proceeds of insurance and condemnation.

Ground Lease means that certain Ground Lease pursuant to which Owner will obtain a leasehold interest to the Premises, which will be entered into between Owner and Battery Park City Authority (upon execution, a true and complete copy of said Ground Lease shall be attached hereto as Exhibit "D"). Owner shall not execute the Ground Lease without the prior Approval of Operator.

Ground Rent means with respect to each Fiscal Year (prorated for any partial Fiscal Years) during the Operating Term, the following amounts: (i) during the first twenty (20) years of the term of the Ground Lease, an amount equal to One Million Fifty Three Thousand Nine Hundred Sixty Nine Dollars ($1,053,969) and (ii) during all subsequent years, an amount equal to One Million Fifty Three Thousand Nine Hundred Sixty Nine Dollars ($1,053,969), as adjusted pursuant to the provisions of the Ground Lease.

Group Marketing Services means the group benefits, services and facilities to be furnished by Operator to the Hotel in common with other hotels operated under the RITZ-

CARLTON Rights, relating to advertising, marketing, promotion, publicity, public relations and sales.

Group Marketing Services Expense means the amounts to be paid to Operator for Group Marketing Services as provided in the Fee and Reserve Addendum.

Guest Program shall have the meaning set forth in Section 2.9(d).

Hazardous Materials means any substance or material containing one or more of any of the following: hazardous material, hazardous waste, hazardous substance, regulated substance, petroleum, pollutant, contaminant, or asbestos, as such terms are, as of the Effective Date or thereafter, defined in any applicable Environmental Law, in such concentration(s) or amount(s) as will require clean-up or removal, or which may present a significant risk of harm to guests, invitees, or Hotel Employees.

Hotel means that portion of the Premises that is attributable to the Hotel Building, the Hotel Building and all Furniture and Equipment, Fixed Asset Supplies and Inventories. The Hotel is more particularly described in the Data Addendum.

Hotel Building means those portions of the improvements that Owner will construct on the Premises that are attributable to or that will be utilized by the hotel to be managed and operated by Operator hereunder, to the extent that such improvements would be attributable to or be utilized by the hotel if the hotel was constructed and operated as a separate, stand-alone structure. The Hotel Building shall include, without limitation, all structural, mechanical, electrical, heating, ventilating, air conditioning, sanitation, sewage treatment and disposal, plumbing and vertical transportation elements of such building.

Hotel Development Cost shall mean One Hundred Two Million Five Hundred Thousand Dollars ($102,500,000).

Hotel Employee means any person employed at the Hotel or elsewhere in connection with the Hotel's business, regardless of who the employer of such person is; provided that, if any such Hotel Employee is not located at the Hotel, the allocation to the Hotel of the costs of such person will only be for time spent working on the business of the Hotel.

Hotel Unit means, collectively, that Unit comprising the Hotel and ancillary rights to use the Common Elements.

Impositions means all taxes or payments in lieu of taxes, including without limitation, all real and personal property taxes or payments in lieu of taxes, water charges and sewer rents, the Hotel Portion of the Civic Facilities Payments (as those two terms are defined in the Ground Lease), ordinary or extraordinary, whether foreseen or unforeseen, of any kind and

nature whatsoever, which prior to or during the Operating Term will have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on the Premises or any other property or rights included in the Hotel, or any part thereof or appurtenances thereto, by virtue of any present or future law, order or ordinance of the United States of America or any state, county or local government or of any department, office or bureau thereof or of any other governmental authority (including, but not limited to, any of the foregoing items payable under the Ground Lease). No fixed or percentage rent payments due under the Ground Lease or assessments or charges due under any CC&R shall be construed as an Imposition.

Incentive Fee means the amount specified in the Fee and Reserve Addendum.

Insurance Retention shall have the meaning set forth in Section 8.2.F.

Inventories means "Inventories of Merchandise" and "Inventories of Supplies" as defined in the Uniform System, such as soap, toilet paper, stationery, writing pens, food and beverage inventories, paper products, menus, expendable office and kitchen supplies, fuel, expensed supplies and similar items.

Legal Requirements shall mean any federal, state, or local law, code, rule, ordinance, regulation or order of any governmental authority or agency having jurisdiction over the business or operation of the Hotel or the matters which are the subject of this Agreement, including, without limitation, the following: (i) any building, zoning or use laws, ordinances, regulations or orders; and (ii) Environmental Laws.

Major Hotel Building Expenditures means all repairs, alterations, improvements, renewals, replacements, or additions to the Hotel Building which are treated as capital expenditures under generally-accepted accounting principles, but which are not Routine Capital Expenditures. The term "Major Hotel Building Expenditures" will include, by way of example and not by way of limitation, (i) any defects in the original construction of the Hotel Building, (ii) structural repairs and modifications, (iii) roof replacements, and (iv) major systems replacements.

Mortgage means any leasehold mortgage, deed of trust, or other similar security interest encumbering the Hotel.

Mortgagee means the holder of a Mortgage.

Negotiating Period shall have the meaning set forth in Section 12.2.

Operating Account means a special account or accounts, bearing the name of the Hotel, established by Operator in a bank or trust company selected by Operator (subject to the provisions of Article 5) and Approved by Owner.

Operating License shall have the meaning set forth in Section 2.5.

Operating Loss shall mean a negative Operating Profit.

Operating Profit shall mean the excess of Gross Revenues over Gross Operating Expenses.

Operating Term means the term of this Agreement as established under Sections 3.1 and 3.2.

Operator has the meaning stated in the Preamble and includes The Ritz-Carlton Hotel Company, L.L.C.'s legal successors and permitted assigns.

Operator's Fees means the amounts to be paid to Operator as Base Fee and Incentive Fee for operating and managing the Hotel pursuant to this Agreement as provided in the Fee and Reserve Addendum.

Outside Commencement Date has the meaning stated in the Data Addendum.

Owner has the meaning stated in the Preamble and includes Millennium BPC Development LLC's Affiliates, legal successors and permitted assigns.

Owner's Investment shall mean the sum total, as of any given point in time during the Operating Term, of (i) the Hotel Development Cost; plus (ii) any Additional Invested Capital expended by Owner; provided that each expenditure of Additional Invested Capital shall be added to the Owner's Investment: (x) with respect to the Fiscal Year or Fiscal Years during which such expenditure occurred, by an amount equal to the amount of such expenditure multiplied by a fraction, the numerator of which is the number of days remaining in the Fiscal Year after the date on which such expenditure was made, and the denominator of which is three hundred sixty-five (365); and (y) with respect to all subsequent Fiscal Years, by the full amount of such expenditure.

Owner's Priority shall mean, with respect to each Fiscal Year (prorated for any partial Fiscal Years) during the Operating Term of this Agreement, a dollar amount equal to ten and one-half percent (10.5%) of the Owner's Investment, computed as of the end of such Fiscal Year.

Ownership Transfer means, in one or a series of transactions, any voluntary or involuntary (i) sale, assignment, conveyance, or other transfer of all or any part of the Hotel or any interest therein or of Owner's rights hereunder (including any lease with a term of five (5) years or more) or (ii) sale, assignment, conveyance, or other transfer of a controlling interest in Owner (i.e., the possession directly or indirectly of the power to direct or cause the direction of management and policies of Owner, whether through the ownership of voting securities, or partnership interests, by contract or otherwise), except in connection with the incurring of a debt secured by a Mortgage. Notwithstanding the foregoing, any sale, assignment, conveyance or other transfer of interests in the Owner shall not be deemed to be an "Ownership Transfer" if, after such sale, assignment, conveyance or transfer, the day-to-day decision-making authority over Owner continues to be controlled by Christopher Jeffries, Philip Lovett and/or Philip Aarons, or by a Person under the control of any or all of the foregoing individuals.

Parking Agreements shall have the meaning set forth in Section 2.10.

Performance Termination Threshold shall mean, with respect to each Fiscal Year during the Operating Term, a dollar amount equal to eighty percent (80%) of the Owner's Priority.

Person means an individual (and the heirs, executors, administrators, or other legal representatives of an individual), a partnership, a corporation, a limited liability company, a government or any department or agency thereof, a trustee, a trust and any unincorporated organization.

Pre-Commencement Agreement means that certain Pre-Commencement Agreement of even date herewith between Owner and Operator.

Premises shall mean the land on which the Hotel Building is to be located, as more fully described in the Data Addendum.

Prospectus has the meaning ascribed to such term in Section 13.12.

Reserve shall mean a special account or accounts, bearing the name of the Hotel, established by Operator, for the purposes described in Section 5.4, in a bank or trust company selected by Operator (subject to the provisions of Article 5) and Approved by Owner.

Residences shall mean those approximately one hundred fifty (150) residential Units (and ancillary rights to use the Common Elements) which are part of the Condominium.

Residential Condominium Unit shall mean, collectively, those Units comprising the Residences.

Restricted Area shall mean that portion of Manhattan, New York, New York, south of the center line of 14th Street, as shown in Exhibit "B" attached hereto. In the event of a conflict between the foregoing description and the map shown in Exhibit "B," the foregoing description shall control.

Revenue Data Publication shall mean Smith's STAR Report, a monthly publication distributed by Smith Travel Research, Inc. of Gallatin, Tennessee, or an alternative source, reasonably satisfactory to both parties, of data regarding the rooms revenue of hotels in the general trade area of the Hotel. Operator shall arrange that Owner shall receive copies of the Revenue Data Publication on a regular basis. The "competitive set" for the Hotel shall be the five (5) most comparable hotels in the general trade area of the Hotel of more than 300 rooms which, as the date hereof, are agreed by Owner and Operator to be the Regent Hotel (which, as of the Effective Date, is under construction), the New York Marriott World Trade Center Hotel, the New York Marriott Financial Center Hotel, the Millennium Hilton Hotel and the Soho Grand Hotel. If, in the reasonable opinion of either Owner or Operator, such Smith's STAR Report ceases to be a satisfactory source of data regarding the rooms revenues of various hotels in the general trade area of the Hotel, or if the "competitive set" requires adjustment due to changes in the market, then either Owner or Operator shall suggest an alternative competitive set or source of data for the other party's Approval. If the parties fail to agree on either such alternate competitive set or source, as the case may be, within a reasonable period of time, then at the election of the suggesting party, the matter shall be resolved by the Expert pursuant to Section 13.7.

Revenue Index shall mean the percentage which is equal to 100 times a fraction, the numerator of which is the Revenue Per Available Room for the Hotel, and the denominator of which is the average Revenue Per Available Room for the hotels in the Hotel's competitive set.

Revenue Index Threshold shall mean ninety-five percent (95%). However, if the entry of a new hotel into the Hotel's competitive set (or the removal of a hotel from such competitive set) causes significant variations in the Revenue Index which do not reflect the Hotel's true position in the relevant market, appropriate adjustments shall be made to the Revenue Index Threshold by mutual agreement of Owner and Operator, or if the parties fail to agree on such adjustment within a reasonable period of time, the matter shall be resolved by the Expert pursuant to Section 13.7.

Revenue Per Available Room shall mean (i) the term "revenue per available room" (or "RevPAR") as defined by the Revenue Data Publication; or (ii) if the Revenue Data Publication is no longer being used (as more particularly set forth in the definition of "Revenue Data Publication"), the aggregate gross room revenues of the hotel(s) in question for a given period of time divided by the total available room nights for such period. If clause (ii) of the preceding sentence is being used, a "room" shall be a hotel guestroom which is keyed as a single

unit, and shall include rooms which are temporarily unavailable due to (i) maintenance, or (ii) ongoing renovation work.

Review shall have the meaning set forth in Section 2.4(b).

RITZ-CARLTON means The Ritz-Carlton Hotel Company, L.L.C.

RITZ-CARLTON Cash Flow Guarantee means that commitment by Marriott International Capital Corporation to support a guaranteed Adjusted House Profit pursuant to, and subject to the terms and limitations set forth in, that certain cash flow guarantee agreement and related documents, if any, to be entered into between Marriott International Capital Corporation and Owner.

RITZ-CARLTON Rights means United States Service Mark Registration No. 1,094,823 issued on June 27, 1978, on the Principal Register for the mark "RITZ-CARLTON" for hotel services and all other service marks, trademarks, trade names, insignias and logos (including a distinctive lion and crown logo which has been furnished to Owner, emblems, services and rights in distinctive design of buildings and signs or combinations thereof used to identify hotels using such marks, names, insignias and logos) used for hotel services, for other related goods and services and for the hotel business associated therewith that contain the RITZ-CARLTON name or by reason of extent of usage are associated with hotels operated by RITZ-CARLTON or its Affiliates.

RITZ-CARLTON Standards means the standard of construction, furnishing, equipping and operation which are applicable to other hotels comparable to the Hotel and operated by Operator or its Affiliates pursuant to the RITZ-CARLTON Rights. Reference is made to the Pre-Commencement Agreement for certain specifics of the RITZ-CARLTON Standards. Owner will be promptly notified by Operator of any material changes in the RITZ-CARLTON Standards which are not already reflected in the applicable Approved Annual Operating Projection.

Routine Capital Expenditures means: (i) alterations, improvements, replacements, renewals and additions to the Furniture & Equipment; and (ii) certain routine repair and maintenance to the Hotel Building which may be capitalized under generally accepted accounting principles, and which are (under Operator's normal procedures) funded from the Reserve.

Safety Reason shall mean any condition in or about the Hotel which presents, in Operator's reasonable judgment, an imminent threat of personal injury or property damage to guests, to employees, to invitees, to Owner or to Operator.

Second Candidate shall have the meaning set forth in Section 2.4(b).

Second Notice shall have the meaning set forth in Section 2.3(e).

Subordination Agreement shall have the meaning set forth in Section 2.3.(a).

Subsequent Owner(s) shall have the meaning set forth in Section 2.3.(a)(3).

Taking shall have the meaning set forth in Section 10.2.

Termination shall mean the expiration or sooner cessation of this Agreement.

Unit shall mean one of the condominium units which will be created by the Condominium Instruments.

Unit Owner shall have the meaning set forth in Section 8.1.A(3).

Uniform System means the Uniform System of Accounts for the Lodging Industry (9th Revised Edition, 1996) as published by the Hotel Association of New York City, Inc., as the same may hereafter be revised.

Working Capital means funds reasonably necessary for the day-to-day operation of the Hotel's business, including amounts sufficient for the maintenance of change and petty cash funds, operating bank accounts, payrolls, accounts payable, accrued current liabilities and funds required to maintain Inventories.

1.2. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders; the singular shall include the plural and the plural shall include the singular. The Table of Contents and titles of Articles, Sections and paragraphs in this Agreement are for convenience only and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections, paragraphs, clauses, exhibits, addenda or riders shall refer to the corresponding Article, Section, paragraph, clause of, or exhibit, addendum or rider attached to this Agreement, unless otherwise specified.

1.3. Exhibits, Addenda And Riders. All exhibits, addenda and riders attached hereto are by reference hereby made a part hereof.

ARTICLE 2.

OWNERSHIP AND FINANCING OF HOTEL; ENGAGEMENT OF OPERATOR

2.1. Ownership of Hotel.

(a) Owner covenants that it will maintain throughout the Operating Term good and insurable (pursuant to standard, filed T.E.R.S.A. rates for the State of New York) leasehold title to that portion of the Premises that is attributable to the Hotel Building and ownership of the Hotel Unit free and clear of liens, CC&Rs, easements or other encumbrances or charges, except as follows:

(1) CC&Rs Approved by Operator (Operator shall not be required to Approve any CC&R which would (i) prohibit or limit, in a materially adverse way, Operator from operating any part of the Hotel (including any facilities customarily a part of a RITZ-CARLTON hotel) in accordance with the RITZ-CARLTON Standards, (ii) allow (other than as specifically set forth in the Condominium Instruments) any Hotel facilities to be used by persons other than Hotel guests or invitees or Hotel Employees, or (iii) materially adversely affect the amount of Gross Revenues or Adjusted House Profit which the Hotel otherwise would have achieved in the absence of such CC&R.);

(2) the Ground Lease;

(3) Easements or other encumbrances or charges which do not materially adversely affect the operation of the Hotel by Operator;

(4) Any Mortgage which complies fully with Section 2.3;

(5) The recordation of a Memorandum of Operating Agreement in the form attached hereto as Exhibit A;

(6) Liens for Impositions which are not yet due or are being contested in good faith; or

(7) Condominium Instruments which have been Approved by Operator pursuant to Section 2.2.

2.2. Condominium; Condominium Concierge Services.

(a) The parties recognize and agree that in order for the Hotel to satisfy Ritz-Carlton Standards, the Condominium must be constructed and operated in a manner that is consistent with such standards, and that the Hotel must be part of a facility that reflects such standards. Accordingly, the parties agree as follows:

(1) The Condominium Instruments, and any amendments or modifications thereof, shall be subject to the Approval of Operator, provided that Operator's right to object to the Condominium Instruments or any part thereof shall be on the basis of (i) a material adverse effect on the economic viability of the Hotel, and (ii) the control of spaces and functions that affect Operator's abilities to operate the Hotel in accordance with Ritz-Carlton Standards. The Condominium Instruments will provide for appropriate allocations of all costs and expenses which are shared among all, or among some, of the Units.

(2) In exercising its rights under the Condominium Instruments as owner of the Hotel Unit (and as owner of such other Units as are not sold to third parties), Owner shall provide Operator with reasonable advance notice of, and all relevant materials in connection with, any matter that materially adversely affects the Hotel, or its operations or finances, or which would materially adversely affect any area of the Condominium which is a general common area or limited common area devoted to the Hotel, shall consider in good faith Operator's comments, and shall exercise such vote in a manner that is consistent with Owner's obligations hereunder, including the obligation to maintain the Hotel to Ritz-Carlton Standards.

(3) In the event that, notwithstanding Owner's exercise of the voting rights accorded the Hotel Unit (and such other Units as are owned by Owner) in compliance with subsection (2) above, the Condominium Association takes action that, in the reasonable opinion of Operator, prevents the Hotel from being maintained or operated as a luxury hotel in accordance with the Ritz-Carlton Standards, or takes action that materially and adversely affects the operation or expenses of the Hotel, Operator shall have the right to terminate this Agreement upon ninety (90) days notice to Owner (provided that, in such event, Operator shall only have the right to so terminate this Agreement, and shall not be entitled to recover damages from Owner in connection with such termination). In such event, Owner shall have ninety (90) days to remedy such action or institute such other procedures in order to address, to Operator's reasonable satisfaction, the adverse effect of the Condominium Association's action, and if such action is taken (or is implemented with adequate assurance that it will be completed within

a reasonable time thereafter) within such ninety (90) day period, then Operator's notice of termination shall be of no further force or effect.

(4) To the extent that any self-help rights with respect to the maintenance or operation of the Condominium are available to the Owner as owner of the Hotel Unit (either pursuant to the Condominium Instruments or under applicable law), Owner agrees that, in the event the exercise of such rights are necessary to maintain the Hotel to Ritz-Carlton Standards, Owner shall exercise such rights in accordance with the Condominium Instruments and applicable law, failing which, after reasonable notice to Owner, Operator shall be entitled (to the extent permitted by the Condominium Instruments and by applicable law) to exercise such rights either in its own name or in the name of Owner. The expense of any such self-help shall be treated, for purposes of this Agreement, as either a Condominium Major Capital Expenditure, a Condominium Operating Expense or a Condominium Routine Capital Expense, whichever is applicable, and shall be paid accordingly. Notwithstanding anything to the contrary contained in this Agreement, in the event that reasonable self-help rights are available to Operator (either under the Condominium Instruments or under applicable law) with respect to the maintenance or operation of the Condominium, then, whether or not Operator shall exercise such self-help rights, Operator shall have no right to terminate this Agreement.

(5) All Condominium Expenses under the Condominium Instruments shall be paid as follows. To the extent that such Condominium Expenses constitute Condominium Operating Expenses, Operator shall pay such amounts from Gross Revenues (and any such payment shall be treated as a Gross Operating Expense). To the extent that such Condominium Expenses constitute Condominium Routine Capital Expenditures, Operator shall pay such amounts from the Reserve. To the extent that such Condominium Expenses constitute Condominium Major Capital Expenditures, Owner shall bear such costs and they shall not be reimbursed (but said amount shall be added to Additional Invested Capital). In the event the parties disagree on the nature of any Condominium Expense, the matter may be submitted by either party to an Expert pursuant to Section 13.7.

(6) The Residential Condominium Unit will be constructed on top of the Hotel, will have separate elevators for service and residents, and will have a separate lobby from the Hotel. The HVAC system and plumbing system for the Residential Condominium Unit will be separately metered from those of the Hotel.

(b) Pursuant to the Condominium Operating Agreement, Operator has agreed to provide certain Hotel Concierge Services (as defined therein) to the Residences. Operator agrees that, notwithstanding the termination of the Condominium Operating Agreement, it shall upon Owner's request, and subject to Operator having continued access to the Residences and reasonably acceptable means of providing such services in accordance with Ritz-Carlton Standards and reasonably acceptable means of billing for such services, continue to offer such services to the Residences for the account of Owner on the terms and conditions described in Section 3 of the Condominium Operating Agreement, for the Operating Term of this Agreement. Subject to the foregoing conditions, Operator agrees that the costs charged to individual Residence owners for Condominium Concierge Services shall be comparable to the costs charged to Hotel guests, provided that where such costs are not separately charged to Hotel guests, costs charged to individual owners of the Residences shall be comparable to market rates for such services.

2.3. Financing of Hotel.

(a) The term "Subordination Agreement" shall mean an agreement which is reasonably satisfactory in all respects to Operator and to Mortgagee, and which has been executed by Operator and by Mortgagee, and which is recordable in the jurisdiction where the Hotel is located, pursuant to which:

(1) Provided that the requirements of Section 2.3(c) have been satisfied, this Agreement and any extensions, renewals, replacements or modifications thereto, and all right and interest of Operator in and to the Hotel, shall be subject and subordinate to the Mortgage;

(2) Provided that the requirements of Section 2.3(c) have been satisfied, Operator shall be obligated to each of the Subsequent Owners to perform all of the terms and conditions of this Agreement for the balance of the remaining Operating Term hereof, with the same force and effect as if such Subsequent Owner were the Owner; however, (x) Operator shall be under no obligation to pay any sums to any Subsequent Owner until Operator receives written notice from Owner or Subsequent Owner that such Subsequent Owner has succeeded to Owner's interest under this Agreement, and (y) such Subsequent Owner shall agree to be bound to Operator under the terms and conditions of this Agreement except that such Subsequent Owner shall not be (i) liable for any act or omission of any prior owner (including Owner) or (ii) bound by any amendment of this Agreement made without the consent of the Mortgagee; and

(3) In the event that there is a Foreclosure of the Mortgage, or other exercise by the Mortgagee of its remedies in the event of default, in connection with which title or possession of the Hotel is transferred to the Mortgagee (or its designee) or

to a purchaser at Foreclosure or to a subsequent purchaser from the Mortgagee (or from its designee) (all of the foregoing shall collectively be referred to as "Subsequent Owners"), Operator's rights under this Agreement shall not be disturbed, and this Agreement shall not be terminated, for so long as no event has occurred which under the terms of this Agreement gives the Owner the right to terminate this Agreement.

(b) In the event that the Subordination Agreement contains provisions requiring Operator (upon a default under the Mortgage, or upon various other stipulated conditions) to pay certain amounts which are otherwise due to Owner under this Agreement to the Mortgagee or its designee (rather than to Owner), Owner hereby gives its consent to such provisions, which consent shall be deemed to be irrevocable until the entire debt secured by the Mortgage has been discharged.

(c) Owner shall be permitted to place any Mortgage on the Hotel, provided that one or the other of the following two (2) requirements has been satisfied: (i) the aggregate principal balance of all Mortgages encumbering the Hotel, including the proposed Mortgage, is no greater than seventy-five percent (75%) of the fair market value of the Hotel as of the date when the Mortgage is placed as an encumbrance upon the Hotel; or (ii) Owner, Operator and Mortgagee shall have entered into a Subordination Agreement. For purposes of this Section 2.3, the fair market value of the Hotel shall be reasonably determined by Owner and Operator, and, if Owner and Operator do not agree, either party may request that an Expert make a binding determination of the fair market value of the Hotel. Notwithstanding anything to the contrary contained in this Section 2.3, in the event that the conditions in clause (i) have been satisfied, this Agreement, and any extensions, renewals, modifications and replacements thereof, and all interest of the Operator in and to the Hotel, shall be subject and subordinate to the Mortgage and to the rights of the Mortgagee in and to the Hotel, and, at the option of Mortgagee or any Subsequent Owner, Operator agrees to attorn to such Mortgagee and/or Subsequent Owner subject to the terms and provisions of this Agreement. Operator agrees to execute and deliver to Mortgagee any appropriate documents confirming the foregoing.

(d) Operator shall be entitled to review all Mortgages and any related documents to satisfy itself that the terms and conditions thereof are consistent with the terms and conditions of this Agreement, including this Section 2.3 and Section 8.1.D.

(e) In the event of (i) an Event of Default by Owner in the performance or observance of any of the terms and conditions of this Agreement, or (ii) any other occurrence which entitles Operator to terminate this Agreement, and in the event that Operator gives written notice thereof to Owner pursuant to Article 11 of this Agreement, or any applicable other provisions of this Agreement, Operator shall also give a duplicate copy (herein referred to as the "First Notice") of such notice to the first Mortgagee, at the address previously provided to Operator by such Mortgagee. Any such notice will be

sent in the manner described in Section 13.22 hereof. Mortgagee shall have the right, but not the obligation, to cure any Event of Default, or any other occurrence which entitles Operator to terminate this Agreement, and shall be granted an extra thirty (30) days in which to effectuate such cure (or such longer period of time as may be necessary, provided that Mortgagee is diligently pursuing such cure). In the event that such Event of Default or any other occurrence entitling Operator to terminate this Agreement, is not cured within such applicable cure period and Operator intends to exercise its remedy of terminating this Agreement, Operator shall send a second notice (the "Second Notice") to such first Mortgagee, to the same address and in the same manner applicable to the First Notice, stating Operator's intention to terminate this Agreement. Operator shall forbear from taking any action to terminate this Agreement for a period of thirty (30) days after the service of the Second Notice (if such Second Notice is required, as set forth above). It is understood that any failure by Operator to give such a duplicate notice (either the First Notice or the Second Notice, as the case may be) to any Mortgagee shall not itself be an Event of Default by Operator under this Agreement, but rather shall operate only to void the effectiveness of any such notice by Operator to Owner under Article 11 of this Agreement, until such First Notice or Second Notice (as the case may be) has been properly sent to such Mortgagee. Except as specifically limited by this Section 2.3, nothing herein shall preclude Operator from exercising any of its rights or remedies against Owner with respect to any Event of Default by Owner under this Agreement.

(f) Upon the request of a proposed Mortgagee, at any time during the Operating Term, Operator will enter into an appropriate amendment of this Agreement, or a separate agreement, setting forth customary lender-protection provisions (including, but not limited to, cash management provisions); provided that no such amendment or separate agreement will either: (1) alter any of the provisions of this Agreement relating to Operator's compensation hereunder; or (2) materially and adversely to Operator, alter any other substantive provision of this Agreement.

2.4. Hotel Employees

(a) Subject to paragraphs (b) and (e) below, and the Approved Annual Operating Projection, Operator shall have the sole right to select, appoint and supervise all Hotel Employees as Operator deems appropriate for the proper operation, maintenance and security of the Hotel. All Hotel Employees shall be employees of Operator, and the terms of their employment (including compensation) and all hiring and firing of all Hotel Employees shall be at the sole discretion of Operator, subject to paragraphs (b) and (e) below. Owner shall have no right to supervise or direct the General Manager or any other Hotel Employees, and Owner covenants and agrees not to attempt to so supervise or direct.

(b) Operator shall obtain the Approval of Owner before hiring the General Manager, the Director of Sales and Marketing and the Comptroller of the Hotel. Owner's Approval for each of the foregoing positions shall be obtained, with respect to each position, as follows: Operator shall present to Owner a qualified candidate ("First Candidate") for the applicable position and Owner shall have the right to interview the First Candidate and determine whether or not to grant its Approval (the act of interviewing and determining whether or not to grant Approval, hereinafter "Review"). In the event Owner shall not Approve the First Candidate, Operator shall present Owner with another qualified candidate ("Second Candidate") for the applicable position and Owner shall have the right to Review the Second Candidate. In the event Owner shall not Approve the Second Candidate, Operator shall present Owner with a final qualified candidate ("Final Candidate") for the applicable position and Owner shall have the right to Review the Final Candidate. If Owner shall not Approve the Final Candidate, Owner shall, within ten (10) business days after the date of the Review of the Final Candidate, Approve either the First Candidate or the Second Candidate for the applicable position.

(c) The cost and expense of all Hotel Employees shall be part of Gross Operating Expenses. All bookkeeping, accounting and all other work relating to all Hotel Employees shall be performed by Operator.

(d) Subject to Sections 2.4(b) and (e) and subject to the Approved Annual Operating Projection, Operator shall have the duty and absolute discretion in the performance of such duty, to hire, promote, supervise, direct, train, and discharge all Hotel Employees, to fix their compensation and to establish and maintain all policies relating to the employment of the Hotel Employees; provided, however, that Operator shall cause Operator's employment practices to comply with all applicable laws, regulations or orders of all governmental or quasi-governmental authority. The payroll and all employee related costs and expenses for all Hotel Employees (including, but not limited to, salaries, wages, severance obligations, social security and other taxes and charges and fringe benefits including, but not limited to cost of living allowances, mobilization and relocation costs, vacations, automobiles, housing for employees and dependents, and schooling for dependents) shall be deemed Hotel Gross Operating Expenses.

(e) Operator shall establish pay scales, staffing levels, labor policies and employee benefit programs that are consistent with those prevailing in comparable Ritz-Carlton hotels, after making due allowance for differences in the size, location, number of years of operation, market orientation and labor conditions. Operator shall provide Owner with bi-annual local wage surveys and shall keep Owner reasonably informed with respect to any changes in such pay scales, staffing levels and labor policies which are likely to have a material effect on the profitability of the Hotel. Except to the extent required by applicable Legal Requirements, Operator shall not (i) enter into or otherwise

conduct negotiations with any union(s) representing any Hotel Employees or (ii) enter into any labor contract with any such union(s), unless Operator shall have first received the approval of Owner which may be granted or withheld in Owner's sole and absolute discretion.

2.5. Operation of Hotel. Owner hereby authorizes and engages Operator to act as the exclusive operator and manager of the Hotel during the Operating Term, with exclusive responsibility and complete and full control and discretion in the operation, direction, management and supervision of the Hotel, subject only to the terms, conditions and limitations expressed herein, and Operator hereby accepts such engagement subject to the terms, limitations and conditions expressed in this Agreement. Such authority of Operator shall include the use of the Hotel for all customary purposes, and without limiting the generality of the foregoing (but subject to the terms, conditions and limitations contained herein), Operator is hereby authorized to, and shall, do the following with respect to the Hotel:

(a) Determine all terms for admittance and charges for rooms, commercial space and other amenities and services;

(b) Determine all credit policies, including entering into policies and agreements with credit card organizations;

(c) Establish entertainment and amusement policies (including pricing);

(d) Establish food and beverage policies (including pricing), including the right to conduct catering operations outside of the Hotel;

(e) Determine all labor policies, including wage and salary rates and terms, fringe benefits, pension, retirement, bonus and employee benefit plans, and the hiring or discharge of all Hotel Employees;

(f) Arrange in Owner's or Operator's name for utility, telephone, cable television and interactive television services, vermin extermination, security, trash removal and other services;

(g) Establish all advertising, public relations and promotional policies, including the exclusive control over all paid advertising, press releases and conferences; (provided, however, that (1) Operator will obtain Owner's prior Approval of any press releases and/or conferences which are outside of the normal course of hotel operations; and (2) Operator will obtain Owner's prior approval, which may be withheld in Owner's sole discretion, to any press release and/or conference in which the Owner's name is used).

(h) Establish all complimentary policies (including complementaries to Operator's and its Affiliates' employees) consistent with the policies of other Ritz-Carlton hotels;

(i) Purchase on the credit of Owner all Inventories, replacements of and additions to Fixed Asset Supplies and Furniture and Equipment and other services and merchandise as are appropriate for the proper operation of the Hotel;

(j) Enter into such leases, licenses, concession agreements and other undertakings in Owner's or Operator's name as Operator shall from time to time consider appropriate; provided, however, that Operator will ensure that each such lease, license, concession agreement or other undertaking (any of the foregoing shall be referred to as a "Lease") shall contain a requirement that the tenant, licensee, concessionaire or other occupant (any of the foregoing shall be referred to as a "Tenant") under such Lease may not offer for sale any merchandise with respect to which Owner (in a previously-executed agreement regarding other retail space within the Condominium) has agreed with a third-party that such third-party shall have the exclusive right to offer certain merchandise for sale within the Condominium (an "Exclusive"), provided that Owner has previously notified Operator in writing of the existence and description of the Exclusive; and provided further that none of the foregoing provisions regarding Exclusives shall have any effect upon the following operations in the Hotel: (a) food and beverage operations; and (b) the sale of merchandise which is customarily sold in lobby gift shops which operate in other Ritz-Carlton hotels;

(k) Hire such persons or organizations as Operator deems appropriate to provide advice with respect to Operator's performance hereunder, including attorneys, accountants and other professionals and specialists;

(l) Cause all needed repairs and maintenance to be made to the Hotel and cause all such other things to be done in or about the Hotel as shall be necessary to comply with all requirements of governmental authority, boards of fire underwriters and other bodies exercising similar functions;

(m) Institute and defend such proceedings at law or in equity in the name of either Operator or the Hotel, utilizing counsel selected by Operator, or by an insurance carrier (as the case may be), which Operator shall deem reasonably necessary or proper in connection with the routine operation of the Hotel, including: (i) the institution of dispossessory, eviction and trespass suits; (ii) proceedings for the collection of rents and other amounts due for services rendered, property let or merchandise sold, and proceedings with respect to services rendered for the Hotel or merchandise sold to the Hotel; (iii) matters relating to Hotel Employees (provided that the Approval of Owner shall be obtained where it is required under Section 2.4 hereof); and (iv) routine personal

injury and property damage claims stemming from accidents at the Hotel; in all proceedings at law or in equity which are outside of the above-described routine operation of the Hotel, Operator shall obtain the prior Approval of Owner as to choice of counsel and as to all major litigation decisions.

(n) Pay all payables, debts and liabilities which are generated in the operation of the Hotel, to the extent of available Gross Revenues and funds provided by Owner pursuant to Section 2.8;

(o) Obtain all licenses, permits, certificates, etc. (collectively, "Operating Licenses") which are required under applicable Legal Requirements; the Operating Licenses will, to the extent practicable, be obtained in the name of Operator; however, if required by applicable Legal Requirements, Owner agrees to have any such Operating Licenses issued in the name of Owner, and Owner will promptly sign all required applications in connection therewith;

(p) Prepare all reports and other informational documents which are required under this Agreement;

(q) Make timely payments and filings of all sales taxes and Impositions which are required under applicable Legal Requirements with respect to the Hotel; and

(r) Perform the foregoing in compliance with the operational covenants of the Ground Lease and, if requested by Owner, perform Owner's obligations under the Ground Lease to the extent such obligations are related to the management and operation of the Hotel.

2.6. Limitations on Operator's Authority. Operator shall not, without Owner's Approval:

(a) Institute legal proceedings involving monetary claims in excess of one hundred thousand dollars ($100,000) not covered by insurance or as to which an insurer denies coverage or "reserves rights"; or

(b) Enter into any lease, license or concession agreement for a store, office space, tenant space or lobby space at the Hotel unless (i) the net income to the Hotel from such agreement is anticipated to be less than fifty thousand dollars ($50,000) per year or (ii) such concession is part of a group agreement for RITZ-CARLTON hotels which is substantially uniform in its terms with respect to such hotels; Operator shall not enter into any lease, license or concession agreement regarding space in the Hotel unless same is expressly subject and subordinate to all Mortgages and any modifications or supplements thereto; or

(c) Purchase goods, supplies and services from itself or an Affiliate, unless the prices and other terms of such purchase are competitive with those obtainable from unrelated vendors or are the subject of competitive bidding; regardless of whether or not Owner's Approval is required, all contracts, leases, licenses, concessions or other agreements with any Affiliate of Operator (i) shall be disclosed in writing to Owner, and (ii) shall contain terms (including price) which are competitive with the terms which could be obtained in agreements with third party providers of such services; or

(d) Subject to the terms, conditions and limitations set forth herein, enter into any agreement, contract or lease solely for the Hotel (as opposed to contracts entered into for multiple hotels) with (i) a term exceeding one (1) year or extending beyond the Operating Term, or (ii) involving the expenditure of fifty thousand dollars ($50,000) or more per Fiscal Year as the foregoing amount shall be adjusted for inflation pursuant to Section 13.23; or

(e) Change the Hotel concept or make any other significant operating changes.

2.7. Name. During the Operating Term, the Hotel shall at all times be known and designated as "The Ritz-Carlton, Downtown New York," or by such other name as from time to time may be Approved by Owner and Operator. Operator shall make or cause to be made any fictitious name filings or disclosures required by applicable law with respect to the use of such name for or in connection with the Hotel. Upon any termination or expiration of this Agreement, Owner shall not thereafter use such name or any other name containing or similar to any of the RITZ-CARLTON Rights, except as provided in Section 3.4.4.

2.8. Operation at Owner's Expense. In performing its duties hereunder, Operator shall act solely for the account of Owner and all expenses incurred by Operator in such performance, in accordance with this Agreement, shall be borne exclusively by Owner. To the extent the funds necessary therefor are not generated by the operation of the Hotel, they shall be supplied by Owner to Operator. Operator shall in no event be required to advance any of its own funds for the operation of the Hotel, or to incur any liability in connection therewith unless Owner shall have furnished Operator with funds necessary for the discharge thereof. If Owner fails to furnish such funds, Operator shall have the right, but not the obligation, to advance such funds to Owner as a loan, which shall bear interest until paid in full at a rate equal to (i) the greatest of the following rates for loans made in the currency expended by Operator (a) the local inter bank rate, (b) the local government short term rate, and (c) the base lending rate, each as set by a prominent bank reasonably selected by Operator in the local jurisdiction in which the Hotel is located, plus (ii) fifty percent (50%) percent of the greatest of such rates set forth in (i). Such loan shall be payable within ten (10) days after notice from Operator or, at Operator's sole option, Operator may deduct the amounts owed to Operator, plus interest if any, from amounts otherwise to be distributed to Owner under the terms of this Agreement. All debts and liabilities to third persons

incurred by Operator in the course of its operation and management of the Hotel in accordance with this Agreement shall be the debts and liabilities of Owner only; Operator shall not be liable (except as specifically set forth to the contrary in the applicable provisions of this Agreement, with respect to fraud, gross negligence or willful misconduct) for any such obligations by reason of its operation, management, supervision and direction of the Hotel or for any other reason whatsoever; and Operator may so inform third parties with whom it deals on behalf of Owner and may take any other steps to carry out the intent of this provision.

2.9. Standards of Operation and Care.

(a) Operator's operation of the Hotel shall at all times maintain standards of quality as a luxury hotel not less than those generally prevailing from time to time in other five-star hotels operated by Operator or its Affiliates under the RITZ-CARLTON Rights in urban areas, in all respects, including the following: cleanliness, quality of service to guests, quality of food and beverages, and quality of silverware, tableware and glassware. In determining the Hotel's standards, the standards of quality at The Ritz-Carlton, San Francisco, CA (or such other RITZ-CARLTON hotel as Owner and Operator agree, if the San Francisco, CA hotel ceases to be operated under the RITZ-CARLTON Rights), shall constitute the primary standards of reference, and regional variations shall be taken into account.

(b) In fulfilling its obligations hereunder, Operator shall act as a reasonable and prudent operator of the Hotel, having regard to the luxury status of the Hotel.

(c) Operator agrees that the hotels it operates under the Ritz-Carlton Rights shall not be operated in such a manner, number or location as to cause a diminution in the image or reputation of the Ritz-Carlton Rights. As a material inducement to the execution of this Agreement by Owner, Operator agrees to maintain and preserve the quality of the Ritz-Carlton guest experience as it is known to exist as of the date hereof in Ritz-Carlton hotels and shall continue to improve and implement training programs to educate staff and personnel as to the Ritz-Carlton sensory experience and Ritz-Carlton philosophy; including, without limitation, the use of the Gold Standards, which including the Credo, the Motto, the Three Steps of Service and the Ritz-Carlton Basics, as known as of the date hereof, a copy of which is attached hereto as Exhibit C and incorporated herein by this reference.

(d) The parties acknowledge and agree that it will be important for the Hotel to participate in the current Guest Recognition Program or any similar program ("Guest Program") that Operator operates in respect of Ritz-Carlton hotels and Owner agrees to participate in such Guest Program provided that such Guest Program does not impose a substantial, disproportionate economic detriment to the Hotel compared to other Ritz-Carlton hotels.

2.10 Parking.

(a) Owner shall use reasonable good faith efforts to enter into the necessary agreements ("Parking Agreements") with off-site parking facility(ies) in the vicinity of the Hotel to ensure that the Hotel complies with all applicable zoning laws and regulations with respect to parking and that the parking needs of the Hotel for operational purposes meet RITZ-CARLTON Standards. In addition, the Parking Agreements shall provide that the Hotel, the Hotel guests and Hotel Employees have access rights to (i) a minimum of sixty (60) full-time available parking spaces and, (ii) upon thirty (30) days' prior written notice, up to an additional two hundred twenty (220) additional, part-time available parking spaces to be used in evenings and on weekends. Owner shall submit to Operator, for Operator's review and Approval, all Parking Agreements, and any material amendments or modifications thereto, prior to entering into such Parking Agreements or materially amending or modifying such Parking Agreements, as the case may be. In the event Owner fails to enter into the Parking Agreements within one hundred twenty (120) days prior to the projected Commencement Date, Operator may enter into such Parking Agreements on behalf of the Hotel as are reasonable under the circumstances (in light of the fact that Owner was unable to enter into such Parking Agreements during the period prescribed above), subject to the Approval of Owner. Operator shall make good faith efforts to assist and otherwise cooperate with Owner in obtaining the aforementioned parking spaces, where reasonably available, in parking facilities owned or operated by Operator or one of its Affiliates in the vicinity of the Hotel.

(b) If the Parking Agreements expire or terminate prior to expiration of the Operating Term and Owner has not extended the Parking Agreements or entered into new Parking Agreements (subject to Operator's Approval pursuant to Section 2.10(a)), Operator may, (i) at its option and sole discretion, extend the terms of such Parking Agreements, or enter into new Parking Agreements, for the remainder of the Operating Term under terms that are substantially and materially similar to those that existed under the previous Parking Agreements or (ii) upon Approval by Owner, extend the terms of the Parking Agreements, or enter into new Parking Agreements, under terms that are not substantially and materially similar to those that existed under the previous Parking Agreements.

(c) All revenues received by Operator or the Hotel from Hotel guests, visitors, Hotel Employees and others for parking (whether at the rates set forth in the Parking Agreements or otherwise) shall be treated as Gross Revenues and all costs and expenses incurred by the Operator or the Hotel in connection with the Parking Agreements shall be treated as Gross Operating Expenses.

2.11 Health Club. The Hotel shall include a health club that shall be designed and constructed in compliance with the provisions of the Pre-Commencement Agreement. At least one hundred and eighty (180) days prior to the projected Commencement Date, the parties shall negotiate in good faith either an amendment to this Agreement or a new agreement concerning

the operation, maintenance and use of the health club facilities (which shall provide owners of the Residences with access to the health club and set forth the amount of fees that the owners of the Residences and/or the Condominium Association will pay for such access).

2.12 Ground Lease. Throughout the Operating Term, Owner shall, or, to the extent applicable, use best efforts to cause the Condominium Association to, comply with the terms of the Ground Lease and ensure that the terms of the Ground Lease remain in full force and effect. Owner shall promptly provide Operator with copies of all notices sent or received under the Ground Lease by Owner that have a material adverse affect on the Hotel or Operator's operation and management of the Hotel (including, without limitation, all notices related to a default or breach by either party under the Ground Lease) (and shall use best efforts to cause the Condominium Association to do the same). Owner shall not execute, and shall use best efforts to prevent the Condominium Association from executing, any modification or amendment to the Ground Lease that would materially and adversely affect the Hotel or Operator's operation or management of the Hotel without the prior Approval of Operator.

ARTICLE 3.

OPERATING TERM; EXTENSION; TERMINATION

3.1. Operating Term. The initial Operating Term shall commence on the Commencement Date and shall continue thereafter through December 31 of the year which contains the twenty fifth (25th) anniversary of the Commencement Date, subject to extension as provided in Section 3.2 or early termination as provided in Section 3.3 (such term being herein referred to as the "Operating Term").

3.2. Extension. Upon the expiration of the initial Operating Term, the Operating Term shall be automatically extended for the first of two (2) additional ten (10) year periods unless, not less than one (1) year prior to the expiration of the initial Operating Term, Operator has given written notice to Owner of Operator's election to not extend. The Operating Term shall be automatically extended for a second ten (10) year period unless, not less than one (1) year prior to the expiration of the first ten (10) year extension, Operator has given written notice to Owner of Operator's election to not extend. Any such extension shall be automatically effective without any amendment hereto, but Owner and Operator shall execute and deliver any supplements to this Agreement which either shall reasonably request to evidence any such extension.

3.3. Termination. This Agreement may be terminated prior to the expiration of the then effective Operating Term upon the occurrence of one or more of the following events:

(a) Upon any Event of Default, at the option of the non-defaulting party exercised by written notice to the defaulting party prior to the cure of such Event of Default.

(b) At the option of Operator or Owner exercised by written notice to the other party, in the event of any suspension for a period in excess of one hundred eighty (180) days or withdrawal or revocation of any material governmental license or permit required for Operator's performance under this Agreement or the operation of the Hotel in accordance with the terms hereof, but only if such suspension, withdrawal or revocation is due to circumstances beyond Operator's reasonable control, and provided that Operator has used reasonable efforts to have such license or permit reissued or reinstated. Notwithstanding the foregoing, either Owner or Operator (as the case may be) shall have the right to avoid termination by curing such suspension, withdrawal or revocation, provided Owner or Operator (as the case may be) shall complete such cure prior to the expiration of said one hundred eighty (180) day period. Owner and Operator agree to cooperate with each other in connection with the other party's efforts to cure. Any costs incurred by either party in connection with such cure shall be treated as if such costs were incurred in connection with the initial procurement of such license or permit.

(c) Upon any transfer not permitted by the terms of Article 12, unless consented to in writing by the non-transferring party, at the option of the non-transferring party exercised by written notice to the other party given within ninety (90) days after the non-transferring party learns of such transfer.

(d) Upon any damage or destruction under Section 10.1 that Owner is not required to repair, rebuild or replace, or in the event of any Taking under Section 10.2 with respect to which the Owner is not required to restore the Hotel to a satisfactory architectural unit as a hotel of similar type and class as prior to such Taking (unless Owner has in fact elected, within sixty (60) days after the occurrence of any such event, to so repair, rebuild or replace, or to so restore to a satisfactory architectural unit, even though not required to do so), at the option of either Owner or Operator by written notice to the other given within ninety (90) days after the date of such damage or destruction or the date of such Taking; however, no termination by Owner shall be effective (and if previously given, may be nullified at the election of Operator) if Owner, at any time within three (3) years after such damage or destruction or Taking, has begun to alter, repair, rebuild, restore or replace the Hotel for use as a luxury hotel, even if substantial changes are made to the physical structure of the Hotel. The failure of Owner to alter, repair, rebuild, replace or restore when required to do so under Article 10 may become an Event of Default, also allowing for the termination of this Agreement by Operator.

(e) At the option of Operator, if at any time during the Operating Term, Operator is materially limited in operating and maintaining the Hotel in accordance with

the RITZ-CARLTON Standards and otherwise in conformity with the requirements of this Agreement because of governmental laws, rules or regulations hereafter enacted and Operator so notifies Owner in writing.

(f) Owner shall have the option (unless the fact that the Hotel is not meeting the tests set forth in clauses (1) and (2) below is the direct result of (x) Extraordinary Events; (y) any major renovation of the Hotel or (z) an Event of Default by Owner; provided if the parties are unable to resolve in good faith a dispute concerning whether the Hotel's failure to meet such tests resulted directly from the circumstances described in subsections (x), (y) and (z) above, such dispute shall be resolved by the Expert pursuant to Section 13.7) to terminate this Agreement if:

1. With respect to any two (2) consecutive Fiscal Years, not including any time prior to the first day of the fifth (5th) full Fiscal Year during the Operating Term hereof, Adjusted House Profit (including any amounts funded under the RITZ-CARLTON Cash Flow Guarantee) for each of such two (2) consecutive Fiscal Years is less than the Performance Termination Threshold; and

2. The Revenue Index of the Hotel during each of such two (2) consecutive Fiscal Years is less than the Revenue Index Threshold.

Such option to terminate under this Section 3.3(f) shall be exercised by Owner serving written notice thereof on Operator no later than ninety (90) days after the receipt by Owner of the annual accounting under Section 4.4 hereof for the second (2nd) of the two (2) Fiscal Years in question. If Owner serves such notice, subject to Operator's cure rights described in subsection (g) below, this Agreement shall terminate as of ninety (90) days after the date on which such notice was given; provided that such period of time shall be extended as required by applicable Legal Requirements pertaining to the termination of the employment of the Hotel Employees. Owner's failure to exercise its right to terminate this Agreement with respect to any given two (2) Fiscal Year period shall not be deemed an estoppel or waiver of Owner's right to terminate this Agreement with respect to any subsequent two (2) Fiscal Year period (which period may include a Fiscal Year during the period in which Owner failed to exercise such right).

(g) Upon receipt of Owner's written notice of termination under Section 3.3(f), Operator shall have the option, to be exercised within fifteen (15) days after the date on which Operator receives Owner's written notice of its intent to terminate this Agreement, to avoid such termination by paying to Owner the amount by which Adjusted House Profit (including any amounts funded under the Ritz-Carlton Cash Flow Guarantee) is less than the Performance Termination Threshold with respect to the earlier of the two (2) Fiscal Years in question (that is, the two (2) Fiscal Years which are described in Section 3.3(f)(1) above) (said amount advanced by Operator shall hereinafter

be referred to as the "Cure Amount"). If Operator exercises such option, then the foregoing election by Owner to terminate this Agreement under Section 3.3(f) shall be canceled and of no force or effect and this Agreement shall not terminate. Such cancellation, however, shall not affect the right of Owner, as to any subsequent two (2) consecutive Fiscal Year period (which period may include the latter (but not the earlier) of the two (2) Fiscal Years which were the basis of the Owner's election to terminate, with respect to which the Cure Amount has been paid) to which Section 3.3(f) applies, to again elect to terminate this Agreement pursuant to the provisions of Section 3.3(f) (which subsequent election shall again be subject to Operator's cure rights under this Section 3.3(g)). If Operator does not exercise its option to pay the Cure Amount as permitted by this Section 3.3(g), then this Agreement may be terminated as of the date set forth in Section 3.3(f). Notwithstanding any of the foregoing, Operator shall only have the right to avoid a termination by Owner by paying the applicable Cure Amount on the following occasions: (i) at any time that any amount funded under the RITZ-CARLTON Cash Flow Guarantee is outstanding or any amounts are due and owing thereunder (in which event, if exercised with respect to any Fiscal Year during the period commencing on the first day of the third (3rd) full Fiscal Year through the last day of the twelfth (12th) full Fiscal Year (the "Covered Period"), the Cure Amount shall be added to the outstanding principal balance of the amounts funded under the RITZ-CARLTON Cash Flow Guarantee as described in the RITZ-CARLTON Cash Flow Guarantee documents; provided, however, that in no event shall (x) the total amount added to the principal balance of the amounts funded under the RITZ-CARLTON Cash Flow Guarantee for any Fiscal Year (including any Cure Amounts) exceed the amount that may be added to the principal balance of the amounts funded under the RITZ-CARLTON Cash Flow Guarantee per full Fiscal Year under the RITZ-CARLTON Cash Flow Guarantee documents or (y) the aggregate principal balance outstanding on the amounts funded under the RITZ-CARLTON Cash Flow Guarantee exceed the maximum aggregate principal balance permitted to be outstanding under the RITZ-CARLTON Cash Flow Guarantee documents); and (ii) at any time that no amount funded under the RITZ-CARLTON Cash Flow Guarantee is outstanding and no amounts are due and owing thereunder, on no more than two (2) occasions during the initial twenty-five (25) year Operating Term described in Section 3.1 and on no more than one (1) occasion during each of the two (2) ten (10) year renewal terms described in Section 3.2. In the event that the Cure Amount or any portion thereof (i) is paid with respect to any Fiscal Year occurring after the Covered Period, or (ii) would exceed the amount that may be added to the balance of the amounts funded under the RITZ-CARLTON Cash Flow Guarantee for any Fiscal Year in question under the RITZ-CARLTON Cash Flow Guarantee documents, or (iii) would cause the aggregate principal balance outstanding on the amounts funded under the RITZ-CARLTON Cash Flow Guarantee to exceed the maximum aggregate principal balance permitted to be outstanding under the RITZ-CARLTON Cash Flow Guarantee documents, the Cure Amount described in subsection (i) above or such portion thereof in excess of the amounts described in subsections (ii) and (iii) above, shall be paid by Operator out-of-pocket and

shall not be added to the outstanding principal balance of the amounts funded under the RITZ-CARLTON Cash Flow Guarantee at that time or any subsequent time and shall not be repaid by Owner.

(h) Notwithstanding anything contained in this Section 3.3 or this Agreement to the contrary, without the express written consent of Operator (which consent may be withheld in its sole discretion), this Agreement may not be terminated by Owner for any reason whatsoever (excluding, however, (i) termination pursuant to Section 3.3(f) or (ii) termination "for cause" pursuant to Section 3.3(a) based upon an Event of Default by Operator, the basis of which is willful misconduct, fraud or a crime of moral turpitude concerning Operator in the performance of its duties under this Agreement) at any time that any amount funded under the RITZ-CARLTON Cash Flow Guarantee is outstanding or any amounts are due and owing thereunder.

(i) At the option of Owner or Operator, upon termination of the Ground Lease.

3.4. Transition Procedures. Upon the expiration or termination of the Operating Term, for whatever reason, Owner and Operator shall do the following (and the provisions of this Section 3.4 shall survive the expiration or termination of this Agreement until they have been fully performed):

3.4.1. Licenses and Permits. Operator shall execute all documents and instruments reasonably necessary to transfer (if transferable) to Owner or its nominee all governmental permits and licenses held by Operator necessary to operate the Hotel.

3.4.2. Leases and Concessions. Operator shall assign to Owner or its nominee, and Owner and its nominee, if any, shall assume, all leases and concession agreements in effect with respect to the Hotel which are then in Operator's name rather than in Owner's name, and which were executed in accordance with the terms of this Agreement, except for blanket concessions affecting other hotels operated by Operator or its Affiliates.

3.4.3. Books and Records. All books and records for the Hotel kept by Operator pursuant to Section 4.3 shall be turned over to Owner so as to ensure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination and transcription for a period of seven (7) years and Operator may retain any copies or computer records thereof which it desires.

3.4.4. RITZ-CARLTON Rights. Owner acknowledges that it has no right, title or interest in any of the RITZ-CARLTON Rights and Owner agrees that no right or remedy of Owner, nor any other provision of this Agreement, shall confer on Owner or any

transferee, assignee, sublicensee or successor of Owner, or any person, firm, or corporation claiming through or by Owner, the right to use any of the RITZ-CARLTON Rights whether before or after the expiration or termination of this Agreement, except in accordance with the terms of this Agreement and/or any other agreement which may be entered into by Operator and Owner (or its Affiliates) including, without limitation, the Condominium License Agreement. Within thirty (30) days after Termination, Owner shall remove from the Hotel any signs or other indicia of any connection with the RITZ-CARLTON Rights at Owner's cost, and Owner shall offer Operator all Furniture and Equipment, Fixed Asset Supplies and Inventories bearing any of the RITZ-CARLTON Rights at the appraised value of same but not more than the original cost thereof depreciated over a period of five (5) years, and Operator shall have the right (but not the obligation) to buy same from Owner for such price. The foregoing "appraised value" shall be the average of the appraised value of such items as determined by an appraiser selected by Operator and an appraiser selected by Owner, each appraiser to have had at least ten (10) years experience in the appraisal of hotel operating equipment and hotel inventories. Any of such items which Operator declines to purchase may be used by Owner, but may not be replaced. Operator shall have the right to seek injunctive or other relief in a court of competent jurisdiction to enforce the foregoing provisions, and if such enforcement shall be necessary, Owner shall bear all of Operator's costs, including reasonable attorneys' fees, of such enforcement.

3.4.5. Remittance. Operator shall, within ninety (90) days after Termination, prepare and deliver to Owner a final accounting statement with respect to the Hotel, as more particularly described in Section 4.4 hereof, along with a statement of any sums due from Owner to Operator pursuant hereto, dated as of the date of Termination. Within thirty (30) days of the receipt by Owner of such final accounting statement, the parties will make whatever cash adjustments are necessary pursuant to such final statement. Such cash adjustments will include refunds (if any) which have been paid to the Hotel in connection with prepaid expense items covering periods of time beyond the date of Termination. As a part of such adjustments, Operator shall remit to Owner from the Operating Account and the Reserve all funds remaining, if any, after payment of all accrued Gross Operating Expenses, Operator's Fees, and other amounts due to Operator pursuant to this Agreement. The cost of preparing such final accounting statement shall be a Gross Operating Expense, unless the Termination occurs as a result of an Event of Default by either party, in which case the defaulting party shall pay such cost. Operator and Owner acknowledge that there may be certain adjustments for which the information will not be available at the time of the final accounting and the parties agree to readjust such amounts and make the necessary cash adjustments when such information becomes available; provided, however, that all accounts shall be deemed final as of the first (1st) anniversary of the effective date of Termination, unless either party has notified the other party of a dispute prior to such first (1st) anniversary.

ARTICLE 4.

HOTEL BUDGETARY AND ACCOUNTING PROCESSES

4.1. Annual Operating Projection. Not later than sixty (60) days prior to the commencement of each Fiscal Year, Operator shall submit the Annual Operating Projection to Owner for Owner's review and Approval. The Annual Operating Projection shall contain the following schedules for the forthcoming Fiscal Year:

(a) Operator's reasonable estimate of Gross Revenues and Gross Operating Expenses, itemized in a manner to be mutually Approved by Owner and Operator, together with the assumptions (in narrative form) forming the basis of such schedules;

(b) A separate estimate of Operator's Fees and Group Marketing Services Expense;

(c) An estimate of the amounts to be dedicated to the Reserve and all anticipated Routine Capital Expenditures to be made from the Reserve (including, to the extent then known to Operator, any Condominium Routine Capital Expenses which are proposed to be assessed against the Hotel under the Condominium Instruments);

(d) Any proposed Major Hotel Building Expenditures (including, to the extent then known to Operator, any Condominium Major Capital Expenditures which are proposed to be assessed against the Hotel under the Condominium Instruments);

(e) An estimate of any amounts Owner will be required to provide as Working Capital or to expend to meet Owner's financial obligations under Article 7;

(f) A narrative description of the program for advertising the Hotel for the forthcoming Fiscal Year containing the planned advertising expenditures by category and the assumptions, in narrative form, forming the basis of such plans. Such advertising program may include advertising in which the Hotel participates with one or more other Ritz-Carlton hotels, in which case the cost shall be fairly apportioned; and

(g) A narrative description of the general plan for marketing the Hotel for the Fiscal Year, including, among other things, rate pricing, market penetration, marketing and advertising budgets by market segment, major events plans, trade show participation and the positioning of the Hotel in the local market place.

4.2. Adherence to the Approved Annual Operating Projection.

(a) During the sixty (60) day period prior to the commencement of such Fiscal Year, Operator shall consult with Owner regarding the Annual Operating Projection, so as to provide all information as Owner may reasonably request, answer any questions Owner may have and receive and benefit from Owner's comments regarding the Annual Operating Projection. Based upon such consultation, Operator shall make any agreed changes to the Annual Operating Projection. Once Approved by both Operator and Owner, the Annual Operating Projection shall be referred to herein as the "Approved Annual Operating Projection."

(b) Operator shall use all reasonable efforts to adhere to the Approved Annual Operating Projection. However, it is understood that the Approved Annual Operating Projection is an estimate only and that inflation, currency fluctuation and unforeseen circumstances may make adherence to the Approved Annual Operating Projection impracticable, and Operator shall be allowed, as reasonably necessary, to deviate from each line item in the Approved Annual Operating Projection for an adverse variance of no more than ten percent (10%) on each line item as long as there is no adverse variance of more than five percent (5%) of the total expenses in the Approved Annual Operating Projection in the aggregate. In the event Operator anticipates a need to make additional expenditures in excess of the foregoing variances, Operator shall discuss such needs with Owner and shall jointly consider the need for revisions to the Approved Annual Operating Projection. In that regard, Operator shall continuously monitor the Approved Annual Operating Projection, and should Operator find it necessary to revise the Approved Annual Operating Projection during the course of the Fiscal Year, whether due to a change in business climate, unforeseen capital requirements or for any other reason, Operator will be required to promptly submit such revisions for the balance of the Fiscal Year to Owner for Owner's approval, which approval shall be granted or withheld by Owner acting as a prudent business person, setting forth in writing the reasons for such revisions and/or the measures to be taken to correct such variance. If Owner and Operator are unable to agree on the Annual Operating Projection, or a revision to the Approved Annual Operating Projection, and until an agreement is reached, the Hotel shall be operated on the basis of the last Approved Annual Operating Projection, with the following modifications (each of which shall be deemed to be an Approved modification to the last Approved Annual Operating Projection):

1. Operator shall have the right to expend for Gross Operating Expenses (other than for employee wages and benefits, taxes, insurance or utilities and subject to the other provisions below) the amounts which were set forth in the last Approved Annual Operating Projection, increased or decreased by the percentage change in the CPI since the date of the previous Approved Annual Operating Projection.

2. Operator shall have the right to expend such amounts for taxes, insurance and utilities as are actually required to operate the Hotel and otherwise required by the terms hereof. Operator shall further have the right to expend such amounts as are dependent upon Gross Revenues or calculated based upon Gross Revenues, as provided in this Agreement.

3. Operator shall have the right to expend from the Reserve up to the entire amount to be dedicated thereto during such ensuing Fiscal Year as it reasonably deems necessary to maintain the Ritz-Carlton Standards and to enable Operator to operate the Hotel in accordance with the provisions of Section 2.9 hereof. In addition, if additional contributions are required of Owner pursuant to Section 5.4(b) (including contributions required for that Fiscal Year pursuant to the last Approved Annual Operating Projection), Operator shall have the right to expend such amounts.

4. Operator shall have the right to expend for wages and benefits of Hotel Employees an aggregate amount which shall be equal to the comparable aggregate amount as set forth in the last Approved Annual Operating Projection, subject to adjustment in the ratio equal to the percentage change in the CPI since the date of the previous Approved Annual Operating Projection.

5. Operator shall have the right to expend such amounts as are required to satisfy Safety Reasons.

6. Operator shall have the right to expend such amounts in the Annual Operating Projection over which there is no disagreement between Owner and Operator.

Upon any disagreement over the Annual Operating Projection or a revision to the Approved Annual Operating Projection which cannot be resolved by the parties within sixty (60) days, either Owner or Operator shall have the right, within ten (10) days thereafter, to refer the matter or matters in dispute to the Expert pursuant to Section 13.7.

4.3. Books and Records. Operator shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel on an accrual basis, all in accordance with the Uniform System and generally accepted accounting principles. The books of account and all other records relating to or reflecting the operation of the Hotel shall be kept either at the city where the Hotel is located or at RITZ-CARLTON's executive offices, and shall be available to Owner and its representatives and its auditors or accountants, at all reasonable times for examination, audit, inspection and transcription; provided, that (x) a copy of all such books of account and other records which are generated at the Hotel shall remain at the Hotel, and (y) with respect to any such books of account and other records which are not generated at the Hotel,

copies thereof shall be obtained for the Hotel by Operator, within three (3) business days after any Owner's request therefor, and such copies shall thereafter be kept at the Hotel. All of such books and records pertaining to the Hotel, including, without limitation, books of account, guest records and front office records, at all times shall be the property of Owner.

4.4. Accounting. Operator shall deliver to Owner within twenty (20) days after the end of each calendar month an interim accounting showing the results of the operation of the Hotel (including Gross Revenues, Gross Operating Expenses, and Adjusted House Profit) for such month and for the Fiscal Year to date. Such interim accounting and the annual accounting referred to below shall: (i) be in a form Approved by Owner; (ii) be taken from the books and records maintained by Operator for the Hotel in the manner specified in Section 4.3; (iii) follow the general form set forth in the Uniform System, allowing for deviations which are necessary in order to comply with this Agreement; (iv) separately state the amount of Operator's Fees and the Group Marketing Service Expense; and (v) be accompanied by a certificate of the Hotel Controller certifying that such statement was prepared under such person's direction and in such person's opinion is true and correct. Upon Owner's written request, Operator shall forward to Owner copies of any additional reports concerning the Hotel which have been prepared in the normal course of business of the Hotel. Within one hundred twenty (120) days after the end of each Fiscal Year, Operator shall deliver to Owner an annual accounting, audited and certified by a nationally recognized firm of certified public accountants having hotel accounting experience selected by Owner and Approved by Operator, showing the results of operations of the Hotel during such Fiscal Year (including Gross Revenues and Gross Operating Expenses) and any other information necessary to make the computations required by this Agreement or which may be reasonably requested by Owner, all for such Fiscal Year. If Owner does not present objections to the certified statements within sixty (60) days following receipt by Owner, such certified statements shall be deemed correct and conclusive for all purposes. The annual accounting for any Fiscal Year shall be controlling over the interim accountings for such Fiscal Year.

4.5. Accounting Information for the Ground Lease. Operator shall, upon request by Owner, at Owner's election, either prepare or assist Owner in preparing such financial and accounting information and documentation concerning the operation of the Hotel as is required of Owner under the terms of the Ground Lease; provided, however, that Operator shall not be required to prepare or provide information that is (i) not reasonably related to Operator's management or operation of the Hotel or (ii) proprietary or confidential to Operator and otherwise not made available to the public.

ARTICLE 5.

REVENUES AND EXPENSES

5.1. Operating Account. Gross Revenues and additional funds supplied by Owner for Working Capital or other purposes, exclusive of funds deposited in the Reserve, shall be deposited in the Operating Account. The Operating Account shall be opened and maintained at all times solely by Operator and checks or other documents of withdrawal therefrom shall be signed only by representatives of Operator. Funds in the Operating Account shall be the property of Owner, and all risk of loss with respect to funds in the Operating Account shall be borne by Owner, unless such loss results from the fraud, gross negligence or willful misconduct of Operator or its employees, in which event the risk of such loss shall be borne by Operator (unless, and to the extent that, such loss is covered under the fidelity insurance described in Article 8, in which case such loss shall be paid from the proceeds of such insurance).

5.2. Operator's Fees and Group Marketing Services Expense. In consideration of Operator's performance hereunder, Owner shall pay to Operator the Operator's Fees and the Group Marketing Services Expense. Operator's Fees and Group Marketing Services Expense shall be calculated on a Fiscal Year basis, but shall be payable monthly, on or before the twentieth (20th) day of each calendar month for the preceding calendar month, based upon Operator's reasonable estimate of the amount due as contained in the monthly reports to Owner. Such payments of Operator's Fees shall be done on a cumulative basis throughout each Fiscal Year, with monthly adjustments to take account of variations from the foregoing estimate. Operator is authorized to disburse to itself from the Operating Account the amounts owing as Operator's Fees and Group Marketing Services Expense, but if insufficient funds are available to do so, Owner shall pay such amounts to Operator within twenty (20) days after notice from Operator.

5.3. Working Capital. Subject to the Approved Annual Operating Projection, Operator shall be entitled to use all funds in the Operating Account for the payment of Gross Operating Expenses. In addition, Operator shall be entitled to retain in the Operating Account sufficient Working Capital to service the cash needs of the operation of the Hotel. If, however, at any time there are insufficient funds in the Operating Account to pay such Gross Operating Expenses or if Operator reasonably foresees that such a deficit will occur (taking into account the withdrawal of funds from the Operating Account which will occur to pay Operator's Fees and the Group Marketing Services Expense and to fund the Reserve), Owner, within twenty (20) days after written notice from Operator, or at any times provided in the Approved Annual Operating Projection, shall pay to Operator for deposit in the Operating Account sufficient Working Capital to pay such deficit and restore sufficient Working Capital in the Operating Account to ensure the uninterrupted and efficient operation of the Hotel for the foreseeable future. The initial amount of Working Capital shall be established pursuant to the procedures contained in the Pre-Commencement Agreement.

5.4. Reserve.

(a) On or before the twentieth (20th) day of each calendar month, Operator shall deposit into the Reserve the appropriate percentage amount of Gross Revenues set forth in the Fee and Reserve Addendum. The proceeds from the sale of Furniture and Equipment no longer needed for the operation of the Hotel also shall be deposited into the Reserve. At the end of each Fiscal Year, any amounts remaining in the Reserve shall be carried forward to the next Fiscal Year and shall be in addition to the amount to be reserved in the next Fiscal Year.

(b) If the percentage contributions for the Reserve provided for in the Fee and Reserve Addendum prove insufficient to maintain the RITZ-CARLTON Standards, such that the cost of Routine Capital Expenditures and Condominium Routine Capital Expenditures anticipated in good faith by Operator to be made during the forthcoming Fiscal Year exceeds the funds expected to be available when needed in the Reserve, and if Owner within thirty (30) days of Operator's request does not agree to provide the additional required funds, Operator shall either accept Owner's position or refer the matter to an Expert. Likewise, if either party feels that the percentage contributions for the Reserve provided for in the Fee and Reserve Addendum are more than what is needed to maintain the Ritz-Carlton Standards, such party may request the other party to agree to an appropriate reduction in such percentage contributions for the Reserve; if the other party fails to agree within thirty (30) days after being requested to do so, either party shall be entitled to refer the matter to an Expert. In each case, the Expert shall decide the additional percentage contributions to the Reserve necessary to maintain the RITZ-CARLTON Standards for the Fiscal Year in discussion.

(c) The Reserve shall be opened and maintained at all times solely by Operator, and checks or other documents of withdrawal therefrom shall be signed only by representatives of Operator. Funds in the Reserve shall be the property of Owner, and all risk of loss with respect to funds in the Reserve shall be borne by Owner unless such loss results from fraud, gross negligence or the willful misconduct of Operator or its employees, in which event the risk of such loss shall be borne by Operator (unless, and to the extent that, such loss is covered under the fidelity insurance described in Article 8 in which case such loss shall be paid from the proceeds of such insurance).

5.5. Remittance to Owner. After payment of Gross Operating Expenses, Operator's Fees and the transfer to the Reserve, Operator (subject to Section 11.2) shall remit to Owner on or before the twentieth (20th) day of each calendar month any balance in the Operating Account, less needed Working Capital. At Owner's request, Operator will pay, on behalf of Owner and out of funds which would otherwise be remitted to Owner under this Section 5.5, debt service on any Mortgage, payment of any Imposition, insurance premiums, and other Owner obligations.

5.6. Annual Adjustments. At the end of each Fiscal Year following the rendition of the annual certified statement of operations, Owner and Operator shall promptly (and in all events within thirty (30) days after rendition of such statement) make such adjustments as necessary to ensure that the proper amounts have been paid as Operator's Fees and Group Marketing Services Expense and deposited in the Reserve.

5.7. Investments. Operator shall be entitled to temporarily invest funds in the Operating Account and the Reserve, with due regard for the cash needs of the Hotel. Amounts earned as investments from the Operating Account shall constitute Gross Revenues; amounts earned as investments from the Reserve shall not constitute Gross Revenues, but shall be accumulated in the Reserve. Operator shall request Approval from Owner of permitted investment mediums for this purpose; except as to investment mediums specifically disapproved in writing by Owner within fifteen (15) days after Operator's request for Approval, all risk of loss from such investments shall be borne by Owner, unless such loss results from the fraud, gross negligence or willful misconduct of Operator or its employees, in which event the risk of such loss shall be borne by Operator (unless and to the extent that, such loss is covered under the fidelity insurance described in Article 8, in which case such loss shall be paid from the proceeds of such insurance).

5.8 Actions Under the Ritz-Carlton Cash Flow Guarantee Documents. Operator shall have the authority to disburse from the Operating Account to the lender under the Ritz-Carlton Cash Flow Guarantee documents such repayments as are required to be made under the Ritz-Carlton Cash Flow Guarantee documents, subject to the provisions of the Ritz-Carlton Cash Flow Guarantee documents and to the rights of any Mortgagee that satisfies the requirements of Section 2.3(c) hereto (as such rights are set forth in the Ritz-Carlton Cash Flow Guarantee documents).

ARTICLE 6.

ROUTINE REPAIRS, MAINTENANCE AND ALTERATIONS; USE OF RESERVE

6.1. Routine Repairs, Maintenance, and Alterations. Operator shall maintain the Hotel in good repair and condition and in conformity with applicable Legal Requirements and in accordance with the Ritz-Carlton Standards. In so doing, Operator shall make or cause to be made such routine repairs, routine maintenance, and minor alterations for which the cost can be expensed under generally accepted accounting principles, as it deems necessary for such purposes, subject to the Approved Annual Operating Projection. The costs of such repairs, maintenance, and alterations shall be Gross Operating Expenses. Repairs, maintenance, and alterations to the Hotel Building or its Furniture and Equipment which are not expensed under generally accepted accounting principles shall be paid and accounted for as described in Section 6.2 and Article 7.

6.2. Use of Reserve. Operator shall use the funds in the Reserve for Routine Capital Expenditures and Condominium Routine Capital Expenses, as set forth in the Approved Annual Operating Projection.

ARTICLE 7.

MAJOR HOTEL BUILDING EXPENDITURES

7.1. Major Hotel Building Expenditures. Owner shall from time to time, at its sole cost and expense, make such Major Hotel Building Expenditures which are necessary to maintain the Hotel as a luxury class hotel in accordance with the Ritz-Carlton Standards (provided that such Major Hotel Building Expenditures do not involve expansions or additions to the Hotel and are consistent with the types of repairs, alterations, improvements, renewals or replacements being performed at a majority of similar-size and market hotels then being managed by Operator as Ritz-Carlton hotels). All Major Hotel Building Expenditures shall be mutually Approved by Owner and Operator as part of the Approved Annual Operating Projection for the Fiscal Year in question. All Major Hotel Building Expenditures shall be made with as little hindrance to the operation of the Hotel as possible, and Owner and Operator shall use all reasonable efforts to prevent any liens from being filed against the Hotel which arise from any such work and, if any such liens are filed, Owner (or Operator, as the case may be) shall promptly obtain the release thereof. If Owner does not promptly begin and diligently pursue to completion any Major Hotel Building Expenditure permitted under this Article 7, Operator shall be authorized to undertake such Major Hotel Building Expenditure on Owner's behalf. If Owner and Operator disagree as to whether any Major Hotel Building Expenditure is necessary for any of the purposes described above in this Article 7, Operator shall either accept Owner's position or refer the matter to an Expert. The Expert's fees and expenses shall be borne by the party against whom the Expert decides.

ARTICLE 8.

INSURANCE

8.1 Condominium Insurance

A. The Owner will ensure that the Condominium Instruments require the Condominium Association, commencing with the Commencement Date and thereafter during the Operating Term of the Agreement, to procure and maintain or cause to be procured and maintained (through, for example, the management agreement for the Condominium), with insurance companies with an A.M. Best rating of A-, VIII or better, a minimum of the following insurance:

(1) Property insurance on the common elements ("Common Elements") of the Condominium against loss or damage by fire, theft, earthquake, flood, wind, lightning and all other risks covered by an "all risk" property insurance policy including coverage for law and ordinance and not subject to coinsurance provisions, in an amount not less than 100% of the replacement cost of the entire Common Elements (excluding excavation and foundation costs) thereof;

(2) Boiler and machinery insurance against loss or damage from explosion of boilers or pressure vessels to the extent applicable to the Common Elements on a comprehensive basis. If the property insurance and boiler policies are not written with the same insurer, then both policies shall contain a joint loss agreement provision;

(3) Business interruption insurance for the benefit of the Condominium Association and the owners of the Units ("Unit Owners") covering loss of profits and necessary continuing expenses for interruptions caused by any occurrence covered by the insurance referred to in Sections 8.1.A(1) and 8.1.A(2) covering at least two years with an extended period of indemnity of at least 180 days, of a type and in amounts as are determined by the Condominium Association;

(4) General liability insurance (including, to the extent applicable, liquor liability insurance) against claims for bodily injury, death or property damage occurring on, in, or about the Common Elements, and (to the extent applicable) automobile liability insurance on vehicles operated in conjunction with the Hotel Unit, with a combined single limit for each occurrence of not less than One Hundred Million Dollars ($100,000,000).

(5) Such other insurance in amounts as the Condominium Association in its reasonable judgment deem advisable for protection against claims, liabilities and losses arising out of or connected with the operation of the facility.

B. The Owner will ensure that the Condominium Instruments require the owners of all Units (but not including the individual Residences), commencing with the Commencement Date and thereafter during the Operating Term of the Agreement, to procure and maintain, with insurance companies with an A.M. Best rating of A-, VIII or better, a minimum of the following insurance:

(1) General liability insurance (including to the extent applicable liquor liability insurance) against claims for bodily injury, death or property

damage occurring on, in, or about their Unit, and (to the extent applicable) automobile liability insurance on vehicles operated in conjunction with the Hotel Unit, with a combined single limit for each occurrence in customary amounts reasonably satisfactory to Owner and Operator.

(2) Workers' compensation insurance as may be required under applicable Legal Requirements, and employer's liability insurance, in such amounts as are customarily obtained by operators of comparable business.

C. All policies under Section 8.1.A shall contain a waiver of subrogation, waiving all rights of recovery against each Unit Owner. The premium for all the policies of insurance under 8.1.A will be allocated on an equitable basis between the Unit Owners.

D. All policies of insurance required under Section 8.1.A shall be carried in the name of the Condominium Association and any other entity required by contract. The policies required under Sections 8.1.A shall include each Unit Owner as a named insured, and the Operator and the manager of the Condominium and any submanager of the Condominium (collectively, the "Condominium Manager") as additional insureds. The policies required under Sections 8.1.B shall include the Unit Owner as a named insured, and the Condominium Association, the Operator and the Condominium Manager as additional insureds. Upon notice by the Unit Owner, the Condominium Association shall also have the policies required under Sections 8.1.A(1), (2), and (3) include any Unit Owner's Mortgagee as an additional insured or a mortgagee. Any property losses thereunder shall be payable to the respective parties as their interests may appear. Any Mortgage encumbering the Common Elements shall contain provisions to the effect that proceeds of the insurance policies required to be carried under Sections 8.1.A(1) and (2) shall be available for repair and restoration of the Common Elements.

E. The Condominium Association shall deliver to each Unit Owner certificates of insurance with respect to all policies so procured pursuant to Section 8.1.A and, in the case of insurance policies about to expire, shall deliver certificates with respect to the renewal thereof. Each Unit Owner shall deliver to the Condominium Association, to the Operator and to the Condominium Manager certificates of insurance with respect to all policies so procured pursuant to Section 8.1.B and, in the case of insurance policies about to expire, shall deliver certificates with respect to renewals thereof. All certificates of insurance provided for under Section 8.1 shall, to the extent obtainable, state that the insurance shall not be canceled or materially changed without at least thirty (30) days' prior written notice to the certificate holder. Upon request, Operator, the Unit Owners, or the Condominium Association shall also deliver copies of the certificates of insurance to any Mortgagee.

8.2 Hotel Insurance

A. Operator shall, commencing with the Commencement Date and thereafter during the Operating Term of the Agreement, procure and maintain, either with insurance companies with an A.M. Best rating of A-, VIII or better or by legally qualifying itself as a self insurer, a minimum of the following insurance:

(1) Property insurance on the Hotel's improvements and betterments and contents against loss or damage by fire, lightning and all other risks covered by the usual so-called "all-risks" perils (including flood, earthquake and sewer backup coverage), all in an amount not less than one hundred percent (100%) of the replacement cost thereof (exclusive of excavation and foundation costs) with a co-insurance waiver and/or an agreed amount endorsement;

(2) Boiler and machinery insurance against loss or damage from explosion of boilers or pressure vessels to the extent applicable to the Hotel;

(3) Business interruption insurance covering loss of profits and necessary continuing expenses for interruptions caused by any occurrence covered by the insurance referred to in Sections 8.2.A(1) and (2) of a type and in amounts as are generally established by Operator at similar hotels it owns, leases or manages under the Ritz-Carlton name in the United States, but which in any event will provide coverage for not less than two (2) years;

(4) General liability insurance (including liquor liability insurance) against claims for bodily injury, death or property damage occurring on, in, or about the Hotel, innkeepers' liability (to the extent required by applicable Legal Requirements), and automobile liability insurance on vehicles operated in conjunction with the Hotel, with a combined single limit for each occurrence of not less than One Hundred Million Dollars ($100,000,000) on a per-location aggregate basis;

(5) Workers' compensation insurance as may be required under applicable Legal Requirements, and employer's liability insurance and employment practices liability insurance, in such amounts as are customarily obtained by owners or operators of comparable luxury hotels, covering all of Operator's employees at the Hotel;

(6) Fidelity bonds, with limits to be reasonably determined by Operator, covering its employees in job classifications normally bonded in other similar hotels it leases or manages under the RITZ-CARLTON name in the United

States and as otherwise required by law, and comprehensive crime insurance to the extent Operator and Owner mutually agree it is necessary for the Hotel; and

(7) Such other insurance in amounts as Operator or Owner in its reasonable judgment deems advisable for protection against claims, liabilities and losses arising out of or connected with the operation of the Hotel.

B. All insurance described in Section 8.2 may be obtained by Operator by endorsement or equivalent means under its blanket insurance policies.

C. Operator may, by legally qualifying itself as a self insurer, self insure or otherwise retain such risks or portions thereof as good insurance practice would dictate and as it does with respect to other similar hotels it owns, leases or manages under the RITZ-CARLTON name in the United States.

D. All policies of insurance required under Section 8.2.A shall be carried in the name of Operator. The policies required under Sections 8.2.A(1), (2), (3), and (4) shall include the Owner as an additional insured. Upon notice by the Owner, Operator shall also have the policies required under Sections 8.2.A(1), (2), and (3) include any Mortgagee as an additional insured. Any property losses thereunder shall be payable to the respective parties as their interests may appear. To the extent that such provisions are normal and customary in similar transactions as of the date of the execution of such Mortgage, any Mortgage encumbering the Hotel shall contain provisions to the effect that proceeds of the insurance policies required to be carried under Sections 8.2.A(1) and (2) shall, subject to the Mortgagee's customary requirements, be available for repair and restoration of the Hotel.

E. Operator shall deliver to Owner certificates of insurance with respect to all policies so procured and, in the case of insurance policies about to expire, shall deliver certificates with respect to the renewal thereof. All certificates of insurance provided for under this Section 8.2 shall, to the extent obtainable, state that the insurance shall not be canceled or materially changed without at least thirty (30) days' prior written notice to the certificate holder. Upon request, Operator shall also deliver copies of the certificates of insurance to any Mortgagee. Operator also agrees to make policies available for review at Operator's headquarters offices.

F. Insurance premiums and any other costs or expenses with respect to the insurance or self-insurance required under Section 8.2, including any Insurance Retention (as defined below), shall be paid from Gross Revenues as Gross Operating Expenses. Such premiums and costs shall be allocated on an equitable basis to the hotels participating under Operator's blanket insurance or self-insurance programs. Any reserves, losses, costs or expenses which are uninsured shall be treated as a cost of insurance and

shall be Gross Operating Expenses. Upon Termination, an escrow fund in an amount acceptable to Operator shall be established from Gross Revenues to cover the amount of any Insurance Retention and all other costs which will eventually have to be paid by either Owner or Operator with respect to pending or contingent claims, including those which arise after Termination for causes arising during the Operating Term of the Agreement. If Gross Revenues are insufficient to meet the requirements of such escrow fund, then Owner shall deliver to Operator, within ten (10) days after receipt of Operator's written request therefor, the sums necessary to establish such escrow fund; and if Owner fails to timely deliver such sums to Operator, Operator shall have the right (without affecting Operator's other remedies under this Agreement) to withdraw the amount of such expenses from the Reserve, Working Capital or any other funds of Owner held by or under the control of Operator. For purposes of this Section 8.2.F, "Insurance Retention" shall mean the amount of any loss or reserve under Operator's blanket insurance or self-insurance programs which is allocated to the Hotel, not to exceed the higher of (A) the maximum per occurrence limit established for similar hotels participating in such programs (Owner hereby acknowledges that, under Operator's current program, such Insurance Retention is Twenty-five Thousand Dollars ($25,000) per occurrence), or (B) the insurance policy deductible on any loss which may fall within high hazard classifications as mandated by the insurer (e.g., earthquake, flood, windstorm on coastal properties, etc.). If the Hotel is not a participant under Operator's blanket insurance or self-insurance programs, "Insurance Retention" shall mean the amount of any loss or reserve allocated to the Hotel, not to exceed the insurance policy deductible.

ARTICLE 9.

IMPOSITIONS, CC&RS AND UTILITIES

9.1. Impositions. Owner shall pay, prior to delinquency, all Impositions. However, at Owner's request and direction, Operator shall pay Impositions from Gross Revenues, provided that Owner furnishes to Operator, at least twenty (20) days prior to the date payment is required, the official bill or assessment therefor, together with any additional required funds for the payment thereof. Operator shall promptly deliver to Owner all notices of assessments, valuations and similar documents to be filed by Operator or Owner or which are received from taxing authorities by Operator. Notwithstanding the foregoing obligations of Owner, Owner may, at its sole expense, contest the validity or the amount of any such Impositions, provided that such contest does not materially jeopardize Operator's rights under this Agreement. Operator agrees to cooperate with Owner and execute any documents or pleadings required for such purpose, but Owner shall reimburse Operator for any out-of-pocket costs incurred by Operator in so doing..

9.2. CC&Rs. All financial obligations (other than Condominium Operating Expenses) imposed on the Hotel, Owner or Operator pursuant to any CC&Rs which have been Approved

by Operator shall be paid by Operator from Gross Revenues, as Gross Operating Expenses, or from the Reserve, whichever is appropriate under the terms of this Agreement. All Condominium Operating Expenses shall be paid by Operator from Gross Revenues as Gross Operating Expenses.

9.3. Utilities, Etc. Operator shall promptly pay all fuel, gas, light, power, cable television, water, sewage, garbage disposal, telephone and other utility bills currently as they are incurred in connection with the Hotel from Gross Revenues or Working Capital.

ARTICLE 10.

DAMAGE OR DESTRUCTION; CONDEMNATION

10.1. Damage or Destruction. Subject to the terms of the Mortgage and the Condominium Instruments, if a portion of the Hotel shall be damaged or destroyed at any time during the Operating Term by fire, casualty or any other cause and the cost of repairing, rebuilding or replacing does not exceed one-third of the replacement cost of the Hotel, Owner will, at its own cost and expense and with due diligence, repair, rebuild or replace the same so that after such repairing, rebuilding or replacing, the Hotel shall be substantially the same as prior to such damage or destruction. Owner shall undertake such work within ninety (90) days after the proceeds of any insurance become available to Owner (provided that the release of such insurance proceeds shall have been approved by the Mortgagee) for such repairing, rebuilding or replacing, and shall complete the same diligently; the procedures contained in the Pre-Commencement Agreement shall govern such work to the extent applicable. If the Hotel is damaged or destroyed to such an extent that the cost of repairing, rebuilding or replacing exceeds one-third of the replacement cost of the Hotel, or if the release of such insurance proceeds has not been approved by the Mortgagee, Owner shall have no obligation to repair, rebuild or replace the Hotel. If the parties cannot agree on whether the cost of repairing, rebuilding or replacing does not exceed one-third of the replacement cost of the Hotel, the matter shall be referred to an Expert. Owner shall use best efforts to cause the provisions of the Condominium Instruments to be consistent with Owner's obligations under this Section 10.1.

10.2. Condemnation. If a portion of the Hotel shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding (collectively, a "Taking") by any competent authority, and the cost of restoring the Hotel Building to substantially the condition it was in prior to such Taking does not exceed one-third of the replacement cost of the Hotel, or if a greater portion of the Hotel is taken but only on a temporary basis, and provided that the release of the condemnation award for such purpose has been approved by the Mortgagee and is permitted under the Condominium Instruments, Owner will, at its own cost and expense (up to the amount of any condemnation proceeds received) and with due diligence, restore the Hotel to a satisfactory architectural unit as a hotel of similar type and

class as prior to such Taking, and Owner shall pledge so much of their condemnation awards proceeds as is necessary for such purpose. Owner shall undertake such work within ninety (90) days after such proceeds become available and such work shall be diligently pursued to completion; the procedures contained in the Pre-Commencement Agreement shall govern such work to the extent applicable. If there is a Taking of the Hotel to such an extent that the cost of restoring the Hotel so as to make the Hotel a satisfactory architectural unit as a hotel of similar type and class as prior to such Taking exceeds one-third of the replacement cost of the Hotel, or if the release of the condemnation award has not been approved by the Mortgagee or is not permitted under the Condominium Instruments, Owner shall have no obligation to so restore the Hotel. If the parties cannot agree on either the cost of so restoring the Hotel or on the replacement cost of the Hotel, the matter shall be referred to an Expert. Owner shall use best efforts to cause the provisions of the Condominium Instruments to be consistent with Owner's obligations under this Section 10.2.

ARTICLE 11.

EVENTS OF DEFAULT; REMEDIES

11.1. Events of Default. The following shall constitute Events of Default:

(a) The failure of either party to pay any sum of money to the other party when due and payable, if such failure is not cured within ten (10) days after written notice specifying such failure is received by the defaulting party from the non-defaulting party.

(b) The failure of either party to perform, keep or fulfill any of the other covenants, undertakings or obligations set forth in this Agreement or in the Pre-Commencement Agreement or the Condominium License Agreement or the RITZ-CARLTON Cash Flow Guarantee documents, if (i) such failure has or could have a material adverse effect on the operation of the Hotel or the rights and duties of either party hereto, and (ii) such failure is not cured within thirty (30) days after written notice specifying such failure is received by the defaulting party from the non-defaulting party (however, if such failure is incapable of cure within such period, and the defaulting party commences to cure such default during such period and thereafter prosecutes such cure to completion with all due diligence, then no Event of Default shall exist unless such failure remains uncured after one hundred eighty (180) days after receipt of such notice).

(c) The breaching in any material respect of any warranty or representation made herein or in any document executed in connection herewith.

(d) The filing by Owner or Operator of a voluntary petition in bankruptcy or insolvency under any applicable law; the filing by Owner or Operator of any petition or

answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any applicable law or regulation relating to bankruptcy, insolvency or other relief for debtors; Owner seeking, consenting to or acquiescing in the appointment of any custodian, trustee, receiver, conservator or liquidator of Owner of all or any substantial part of the Hotel or of any or all of the rents, issues, profits, revenues or royalties thereof; the making by Owner or Operator of any general assignment for the benefit of creditors; Owner's or Operator's failure generally to pay its debts as such debts become due; Owner or Operator giving notice to any governmental body of insolvency, pending insolvency or suspension of operations; the entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against Owner or Operator seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any applicable law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or the appointment of any custodian, trustee, receiver, conservator or liquidator of Owner or of all or any substantial part of the Premises or of any of the rents, issues, profits, revenues or royalties thereof without the consent or acquiescence of Owner, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

11.2. Remedies. Upon the occurrence of an Event of Default (in which case the non-defaulting party may also terminate this Agreement as provided in Section 3.3), the non-defaulting party may pursue any and all remedies available to it at law or in equity. In addition, in the event of a failure by a party to perform, keep or fulfill any covenant, undertaking or obligation which would have been an Event of Default but for the lack of materiality (as such concept is stated in Section 11.1) of such default, the non-defaulting party shall have all remedies available at law or in equity except the termination hereof. If Owner fails to make any payment or performance when due under this Agreement, including Owner's failure to make contributions to the Reserve or to Working Capital when requested by Operator or to pay any Operator's Fees or other sums owed to Operator or any of its Affiliates, Operator shall have the right but not the obligation to make such payment or performance on Owner's behalf. Any sums expended by Operator in making such payment or performance on Owner's behalf shall be considered a loan from Operator to Owner, and interest on and payment of such loan shall be as specified in Section 2.8.

ARTICLE 12.

TRANSFER RESTRICTIONS

12.1. Ownership Transfers. Owner shall not, without Operator's approval which may be given or withheld in Operator's sole discretion, consummate any Ownership Transfer (other than a Foreclosure) with a transferee (i) which does not have a verifiable net worth of at least ten percent (10%) of the purchase price of the Hotel, (ii) which does not agree to be bound by all the terms and conditions hereof and does not agree to assume and perform Owner's obligations hereunder, in a writing in form and substance reasonably satisfactory to Operator, and (iii) which includes (or is controlled by) one or more of the following: (a) a "direct competitor" of Operator (the term "direct competitor" shall be deemed to mean either: (x) an entity whose primary business is licensing or operating first-class, luxury hotels, as opposed to owning such hotels; or (y) an entity which is in the business of licensing or operating first-class luxury hotels, regardless of whether or not this constitutes its primary business, but which licenses or operates at least fifteen (15) such hotels); (b) a non-profit (other than pension funds) or governmental entity; (c) a Person who has been convicted of a felony in any state or federal court, or is a known or reputed member of organized crime; (d) any Person which, as its primary business, owns, leases or operates any casino or gambling facility (and any Affiliate of such Person) unless such Person is licensed in the United States; or (e) any Person (and any Affiliate of such Person) which owns or operates a distillery, winery or brewery or a distributorship of alcoholic beverages if such ownership or operation might reasonably impair the ability of Operator or any of its Affiliates to obtain or retain liquor licenses for any hotel, motel, restaurant, bar or lounge (including the Hotel), now or hereafter operated or owned by Operator or any of its Affiliates. In addition, any Ownership Transfer shall be subject to the terms and requirements of the RITZ-CARLTON Cash Flow Guarantee documents. Operator's rights under this Section 12.1 are in addition to, and not in lieu of or exclusive of, Operator's rights under Section 12.2. Owner shall from time to time, upon the written request of Operator, furnish Operator with a list of the name and addresses of the owners of the capital stock, partnership interests or other proprietary interests in Owner (which information shall be kept confidential by Operator).

12.2. Right of First Negotiation.

If Owner desires to sell the Hotel, Owner shall (prior to initiating any efforts to locate a buyer) give written notice to Operator of its desire to sell the Hotel. During the period of sixty (60) days (the "Negotiating Period") following the date on which the Operator receives such notice from Owner, Owner and Operator shall negotiate in good faith regarding the possible purchase of the Hotel by Operator (or one of its Affiliates). If Owner and Operator are unable to agree on mutually satisfactory terms regarding such purchase of the Hotel within the Negotiating Period, Owner shall, after the expiration of the Negotiating Period, be free to sell the Hotel to other parties. If Owner fails to consummate a sale of the Hotel within one (1) year after the expiration of the Negotiating Period, then, if Owner wishes to continue to endeavor to sell the

Hotel, Owner must again comply with the terms of this Section 12.2. This Section 12.2 shall not apply to any Foreclosure or to any sale of the Hotel in connection with a Foreclosure.

12.3. Assignment by Operator. Operator shall have the right to assign its rights and obligations under this Agreement without the consent of Owner: (i) to any Affiliate (provided that (x) such Affiliate, or one of its Affiliates, owns the Ritz-Carlton Rights; (y) such Affiliate and one or more of its Affiliates (if any) operate all of the hotels in the United States which are operated under the Ritz-Carlton Rights; and (z) neither such Affiliate, nor any of its Affiliates which operate hotels under the Ritz-Carlton Rights, operates any hotels under trade names other than Ritz-Carlton); or (ii) to any assignee which is not an Affiliate, but which acquires all or a substantial part of the assets of Operator (including the Ritz-Carlton Rights) and assumes the obligations of Operator, including those hereunder; provided that in no event will the entity operating the Hotel also operate other hotels which are operated under trade names other than Ritz-Carlton. In such latter event, Operator's liability hereunder shall terminate upon such assignment, but in the event of any assignment to an Affiliate, Operator shall continue to be liable under this Agreement to the same extent as though such assignment had not been made. Operator may assign its rights to receive Operator's Fees and Group Marketing Services Expenses or portions thereof to any Person as security for indebtedness. Except as hereinabove provided, Operator shall not assign its rights or obligations under this Agreement without the approval of Owner.

ARTICLE 13.

MISCELLANEOUS

13.1. Further Assurances. Owner and Operator shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between them and as against third parties.

13.2. Waiver. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasion.

13.3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Owner, its successors and permitted assigns, and shall be binding upon and inure to the benefit of Operator, its successors and permitted assigns.

13.4. Governing Law. This Agreement and the Pre-Commencement Agreement are executed pursuant to, and shall be construed under and governed exclusively by, the laws of the State of New York.

13.5. Jurisdiction. Except for any determinations to be made by an Expert pursuant to the terms and conditions of this Agreement, each party hereby expressly and irrevocably submits itself to the non-exclusive jurisdiction of the courts of the State of New York.

13.6. [Intentionally Deleted].

13.7. Expert Decisions. Where a matter is referred to an Expert for determination, the following provisions shall apply to such Expert's determination:

(a) The decision of the Expert shall be final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise.

(b) Each party shall be entitled to make written submissions to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission. The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties. The costs of the Expert and the proceedings shall be borne as directed by the Expert unless otherwise provided for herein. The Expert may direct that such costs be treated as Gross Operating Expenses.

(c) The terms of engagement of the Expert shall include an obligation on the part of the Expert to:

(i) notify the parties in writing of his decision within thirty (30) days after the date on which the Expert has received all submissions which the Expert has requested of either of the parties (or such other period as the parties may agree or as set forth herein);

(ii) apply the standards applicable to luxury class hotels in accordance with the RITZ-CARLTON Standards; and

(iii) establish a timetable for the making of submissions and replies.

13.8 Environmental Matters.

(a) Prior to the Commencement Date, Operator and any outside consultants retained by Operator shall have the option to enter upon the Premises and the Hotel, upon reasonable notice to Owner, to test for the existence of Hazardous Materials. Following such testing, all reasonable steps shall be taken to restore the Premises and the Hotel to their condition prior to such testing. All reasonable expenses of any testing shall be included in the Hotel Development Cost. Operator shall have the right to terminate this Agreement if Hazardous Materials are found on the Premises and/or the Hotel in

quantities sufficient to create a danger (in Operator's good faith judgment) of possible adverse legal consequences to Operator if it were to assume operation of the Hotel.

(b) If any Hazardous Material is discovered at any time on any portion of the Premises or in the Hotel, or if any Environmental Law is violated at any time, Owner at its sole expense (except as otherwise provided in this Section 13.8) shall promptly remove such Hazardous Material (and all contaminated soil and containers), take all other necessary steps to remedy the problem in accordance with all Environmental Laws and comply with all Environmental Laws. Owner at its sole expense also shall indemnify, defend, and hold harmless Operator and its Affiliates against any losses, liabilities, damages (including consequential, punitive, and exemplary damages), penalties or claims against Operator or any of its Affiliates arising out of the presence or removal of Hazardous Materials on the Premises or in the Hotel or the violation of any Environmental Laws.

(c) Notwithstanding the foregoing provisions of Section 13.8 (b), if the presence of any Hazardous Material or the violation of any Environmental Law is caused by Operator's negligence or misconduct, the obligations placed on Owner by Section 13.8 (b) shall instead be Operator's obligations, and the indemnification by Owner of Operator in Section 13.8 (b) shall instead be an indemnification by Operator of Owner.

13.9. Amendments. This Agreement may not be modified, amended, surrendered or changed, except by a written instrument executed by Owner and Operator.

13.10. Estoppel Certificates. Owner and Operator agree, at any time and from time to time, as requested by the other party upon not less than ten (10) days' prior written notice, to execute and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications), certifying the dates on which required payments have been paid, and stating whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, and certifying as to such other matters as to which the requesting party may reasonably request certification, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the party requesting such certificate may be dealing.

13.11. Inspection Rights. Owner shall have the right to inspect the Hotel and examine the books and records of Operator pertaining to the Hotel at all reasonable times during the Operating Term upon reasonable notice to Operator, and Owner and the holder of any Mortgage shall have access to the Hotel and the books and records pertaining thereto at all times during the Operating Term to the extent necessary to comply with the terms of such Mortgage, all to the

extent consistent with applicable law and regulations and the rights of guests, tenants and concessionaires of the Hotel.

13.12. Equity and Debt Offerings by Owner. No reference to Operator, or to any of its Affiliates, or to the Ritz-Carlton Rights, may be made in any prospectus, private placement memorandum, offering circular, similar document or any documentation related to any of the foregoing (collectively, "Prospectus") issued by Owner or any of its Affiliates, which is intended to interest potential investors or lenders in the Hotel, unless Operator has previously received and Approved a copy (which copy may be redacted to prevent disclosure of confidential matters which do not pertain to Operator) of all such references. Regardless of whether Operator so receives and Approves all such references, neither Operator nor any of its Affiliates shall be deemed a sponsor of the offering described in the Prospectus or have any responsibility for the Prospectus, and the Prospectus shall clearly state such non-sponsorship and non-responsibility. This Section 13.12 shall not apply to any of the Condominium Instruments nor to the Condominium Offering Plan as to which the provisions of the Condominium License Agreement shall control.

13.13. Effect of Approval of Plans and Specifications. Owner and Operator agree that in each instance in this Agreement or elsewhere wherein Operator is required to give its Approval of plans, specifications, budgets and/or financing, no such Approval shall imply or be deemed to constitute an opinion of Operator, nor impose upon Operator any responsibility for the design or construction of the Hotel, including structural integrity or life/safety requirements or adequacy of budgets and/or financing.

13.14. Partial Invalidity. If any of the provisions in this Agreement shall be declared invalid by a final and non-appealable order, decree or judgment of any court, this Agreement shall be construed as if such provision(s) had not been inserted, unless such construction would substantially destroy the benefit of the bargain of this Agreement to either Owner or Operator.

13.15. No Representation. In entering into this Agreement, Operator and Owner acknowledge that neither Owner nor Operator has made any representation to the other regarding projected earnings, the possibility of future success or any other similar matter with respect to the Hotel, and that Operator and Owner understand that no guarantee is made to the other as to any specific amount of income to be received by Operator or Owner or as to the future financial success of the Hotel.

13.16. Relationship. In the performance of this Agreement, Operator shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making Operator a partner, agent or joint venturer with Owner or as creating any similar relationship or Person, and Owner covenants and agrees that it will not make any contrary

assertion, contention, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving Operator and Owner.

13.17. Entire Agreement. This Agreement, together with the RITZ-CARLTON Cash Flow Guarantee documents and the Pre-Commencement Agreement, constitute the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written.

13.18. Extraordinary Events. Notwithstanding anything else in this Agreement, if either party's failure to comply with, perform or satisfy any representation, warranty, covenant, undertaking, obligation, standard, test or condition set forth in this Agreement is caused in whole or in part by any Extraordinary Event(s), such failure shall not constitute an Event of Default or default under this Agreement (unless the failure is a failure to procure or maintain insurance coverages specified in Article 8 or to make any monetary payments required by this Agreement), and such failure (except regarding insurance coverages and monetary payments) shall be excused for as long as the failure is caused in whole or in part by such Extraordinary Event(s).

13.19. Interpretation. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

13.20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the parties hereto and all of which shall constitute one and the same agreement.

13.21. [Intentionally Deleted].

13.22. Notices. Any notice, statement or demand required to be given under this Agreement shall be in writing and be, and at the option of the party giving notice, (i) personally delivered, or (ii) transmitted by postage prepaid first class mail, or by facsimile machine or by a recognized overnight delivery service, addressed:

If to Owner: Chief Financial Officer
Millennium BPC Development LLC
1995 Broadway, 3rd Floor
New York, New York 10023

With copies to: Mr. Christopher M. Jeffries
Millennium Partners LLC
1995 Broadway, 3rd Floor
New York, New York 10023

and

Eric Landau, Esquire
Battle Fowler LLP
75 East 55th Street
New York, New York 10022

If to Operator: The Ritz-Carlton Hotel Company, L.L.C.
3414 Peachtree Road, N.E., Suite 300
Atlanta, Georgia 30326, U.S.A.
Attention: General Counsel

and

Marriott International, Inc.
Dept. 52/923
10400 Fernwood Road
Bethesda, MD 20817
Attn: Senior Operations Attorney

and

General Manager of the Hotel

With a copy to: such other addresses as Operator or Owner shall designate in the manner herein provided.

Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or if sent by facsimile machine or by a recognized overnight delivery service, or (y) the day five (5) days after it shall have been posted if transmitted by mail, whichever shall first occur, but the time period for any response thereto or action in connection therewith shall not commence to run until actual receipt or rejection or inability to deliver such notice. Owner and Operator each agree that upon giving of any notice, it shall use its best efforts to advise the other by telephone that a notice has been sent hereunder. Such telephonic advice shall not, however, be a condition to the effectiveness of notice hereunder.

13.23. Inflation Adjustments. The monetary amounts stated in Section 2.6 shall be adjusted by the CPI.

13.24. Memorandum. If and to the extent permissible under applicable law, the terms and conditions of this Agreement shall run with the real property comprising the Premises and Owner's interest therein and shall be binding upon all successors to such interest. If and to the

extent permissible under applicable law, Owner and Operator shall execute a Memorandum of this Agreement in the form indicated in Exhibit "A" (or such similar form as is permitted under applicable law) to be recorded in the real property indices or records in the jurisdiction where the real property comprising the Premises is located. Upon Termination, Operator will (upon Owner's request) execute a recordable instrument, in form and substance reasonably satisfactory to Owner, evidencing that this Agreement has been terminated and that the aforesaid Memorandum of Agreement (if recorded) is of no further force or effect.

13.25. Construction of the Hotel. Owner, at Owner's cost and expense, shall cause the Hotel (and all other Condominium areas which are subject to Approval by Operator under the Pre-Commencement Agreement) to be built in accordance with plans and specifications which have been Approved by Operator pursuant to the Pre-Commencement Agreement.

13.26. Conditions to Operator's Obligations. Operator's obligations under this Agreement shall be subject to the following conditions:

(a) the diligent continuation of construction of the Hotel and the remainder of the Condominium, and related facilities, on a schedule which is reasonably projected to result in all of the foregoing being completed by no later than the Outside Commencement Date;

(b) fulfillment by Owner of its obligations under the Pre-Commencement Agreement and related other agreements;

(c) receipt at least sixty (60) days prior to the projected Commencement Date (or, if not obtainable by then, as soon thereafter as legally obtainable) in accordance with the provisions of the Pre-Commencement Agreement, and maintenance thereafter of all licenses, permits and other approvals and instruments necessary for operation of the Hotel by Operator; provided that Operator shall not be permitted to terminate this Agreement for non-receipt of any license, permit or approval unless: (i) such license, permit or approval is material to the operation of the Hotel; (ii) the non-issuance of such license, permit or approval is due to circumstances beyond Operator's reasonable control; and (iii) Operator has diligently pursued the issuance of any such license, permit or approval which is Operator's responsibility to obtain under the terms of the Pre-Commencement Agreement; and

(d) Operator being fully satisfied as to the completeness, accuracy and validity of the representations and warranties made by Owner in Section 14.1.

13.27. Conditions to Owner's Obligations. Owner's obligations under this Agreement shall be subject to the following conditions:

(a) fulfillment by Operator of its obligations under the Pre-Commencement and related other agreements; and

(b) Owner being fully satisfied as to the completeness, accuracy and validity of the representations and warranties made by Operator in Section 14.2.

13.28. Trade Area Restriction.

(a) Commencing on the Effective Date and continuing through the first to occur of (i) December 31 of the year which contains the twenty-fifth (25th) anniversary of the Commencement Date or (ii) December 31, 2027, neither Operator nor any of its Affiliates shall operate, or license or enter into a "management agreement" with respect to, a Competitive Hotel within the Restricted Area.

(b) Except as provided in Section 13.28(a) above, neither this Agreement nor anything implied by the relationship between Operator and Owner shall prohibit Operator, or any Affiliate of Operator, from constructing, owning, operating, promoting, and/or authorizing others to construct, own, operate or promote any hotels or any other lodging concepts, extended stay residences, residential developments, timeshare facilities, restaurants, or other business operations of any type, at any location (including a location proximate to the Hotel), provided that such facilities do not include in their name the words "Ritz Carlton," even if such facilities may be included in the Ritz-Carlton reservation system or the Ritz-Carlton directory, or otherwise utilize the Ritz-Carlton Rights and Ritz-Carlton chain-wide systems, or otherwise may be identified as part of the portfolio of hotels or other facilities managed by Operator or its affiliates.

13.29 Limitation of Liability. Operator agrees that, upon the occurrence of any Event of Default by Owner, Operator shall look solely to Owner's equity interest in the Hotel (including proceeds and/or rent derived therefrom) for collection of any judgment against Owner or for satisfaction of any judicial process requiring the payment of money by Owner. The foregoing limitation on Operator's remedies shall not apply to any Event of Default by Owner which arises as a result of (i) a fraudulent act by Owner, or (ii) Owner's obligations under Section 13.8 of this Agreement.

ARTICLE 14.

REPRESENTATIONS AND WARRANTIES

14.1. Representations and Warranties of Owner. In order to induce Operator to enter into this Agreement, Owner hereby makes the following representations and warranties:

(a) the execution of this Agreement is permitted by the Articles of Incorporation and By-Laws of Owner (or partnership agreement or other organizational instrument or document affecting Owner, if Owner is not a corporation) and this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof;

(b) there is no claim, litigation, proceedings or governmental investigation pending (or as far as is known to Owner, threatened) against or relating to Owner, the properties or business of Owner or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of Owner to enter into this Agreement or to carry out its obligations hereunder, and, to Owner's knowledge, there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Operator;

(c) neither the consummation of the actions completed by this Agreement on the part of Owner to be performed, nor the fulfillment of the terms and conditions of this Agreement, conflicts with or will result in the breach of any of the terms or conditions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Owner is a party or by which it is bound; and

(d) construction of the Hotel shall commence on or before March 31, 2000, and the Hotel shall be opened for business on or before the date specified in the Data Addendum as the "Outside Commencement Date"; provided, however, that in the event that the Hotel is not opened for business as of such date, Operator's sole remedy shall be to terminate this Agreement, on thirty (30) days' notice to Owner; Operator shall not be entitled to damages with respect to Owner's failure to complete the Hotel on or before the Outside Commencement Date; and provided further that if the Hotel is in fact completed and ready to be opened for business within the three (3) year period beginning on the date of such termination, this Agreement will (at Operator's option, exercisable upon thirty (30) days' prior written notice to Owner) become reinstated and in full force and effect.

14.2. Representations and Warranties of Operator. In order to induce Owner to enter into this Agreement, Operator does hereby make the following representations and warranties:

(a) the execution of this Agreement is permitted by the Articles of Incorporation and By-Laws of Operator (or partnership agreement or other organizational instrument or document affecting Operator, if Operator is not a corporation), and this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Operator enforceable in accordance with the terms hereof;

(b) there is no claim, litigation, proceedings or governmental investigation pending (or as far as is known to Operator, threatened) against or relating to Operator, the

properties or business of Operator or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of Operator to enter into this Agreement or to carry out its obligations hereunder, and, to Operator's knowledge, there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Owner; and

(c) neither the consummation of the actions contemplated by this Agreement on the part of Operator to be performed, nor the fulfillment of the terms and conditions of this Agreement, conflicts with or will result in the breach of any of the terms and conditions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Operator is a party or by which it is bound.

(d) provided that the construction and equipping of the Hotel shall have been completed in accordance with the Pre-Commencement Agreement (and, in particular, Section 2.3 thereof) on or before the Outside Commencement Date, and subject to all of the provisions of this Agreement, Operator agrees to assume operation and management of the Hotel in accordance with this Agreement as of the date of such completion of the construction and equipping of the Hotel.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Operator and Owner, acting by and through their proper and duly authorized directors, partners, officers or other representatives, have each duly executed this Agreement as of the Effective Date.

OPERATOR:

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,
a Delaware limited liability company

By: _____
Name: Kevin M. Kimball
Title: Vice President

OWNER:

MILLENNIUM BPC DEVELOPMENT LLC,
a New York limited liability company
By: Millennium Partners LLC, its sole member
By: Millennium Partners Management LLC
By: Millennium Manager I, Inc.

By: _____
Name: Brian Collins
Title: Vice President

FEE AND RESERVE ADDENDUM

(The Ritz-Carlton, Downtown New York)

1. Operator's Fees: Operator's Fees shall be comprised of two (2) components, each calculated on a Fiscal Year basis as follows:

a. "Base Fee" shall be equal to three and one half percent (3.5%) of Gross Revenues.

PLUS

b. "Incentive Fee" shall be equal to twenty percent (20%) of Available Cash Flow.

2. Reserve: There shall be paid into the Reserve the following percentages of Gross Revenues, beginning on the Commencement Date:

First full Fiscal Year	1%
Second full Fiscal Year	2%
Third full Fiscal Year	3%
Fourth through tenth full Fiscal Years	4%
Eleventh and subsequent Fiscal Years	5%

(For purposes of calculating the foregoing, the "First full Fiscal Year" shall mean either (i) if the Commencement Date occurs before July 1 of a given calendar year, the period from the Commencement Date through December 31 of the calendar year in which the Commencement Date occurred; or (ii) if the Commencement Date occurs on or after July 1 of a given calendar year, the period from the Commencement Date through December 31 of the calendar year after the calendar year in which the Commencement Date occurred.)

3. Group Marketing Services Expense. The Group Marketing Services Expense shall equal one percent (1%) of Gross Revenues for any Fiscal Year.

Initials:

Owner:

Operator:

DATA ADDENDUM

(The Ritz-Carlton, Downtown New York)

1. OWNER: Millennium BPC Development LLC

2. HOTEL: That portion of the Premises that is attributable to the Hotel Building, the Hotel Building, Furniture and Equipment, Fixed Asset Supplies and Inventories to be constructed, equipped and furnished by Owner on the Premises pursuant to the requirements of the Pre-Commencement Agreement, containing approximately 316 guest rooms and keys, one (1) restaurant, one (1) bar, lobby lounge, ballroom, meeting rooms, health club and pre-function area(s), appropriate landscaping and other related facilities and installations necessary for the operation thereof.

3. PREMISES: The land on which the Hotel is to be located, a legal description of which is attached hereto as Exhibit "E."

4. OUTSIDE COMMENCEMENT DATE: December 31, 2002 (which date shall be subject to extension for a period of time equal to the duration of any Extraordinary Events, provided that such extension shall not exceed a cumulative total of twelve (12) months).

Initials:

Owner:

Operator:

EXHIBIT "A"

MEMORANDUM OF OPERATING AGREEMENT

THIS MEMORANDUM OF OPERATING AGREEMENT is made and entered into as of this day of , 19 by and between Millennium BPC Development LLC, a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at c/o Millennium Partners LLC, 1995 Broadway, Third Floor, New York, New York 10023 (herein called "Owner") and THE RITZ-CARLTON HOTEL COMPANY, L.L.C., a Delaware limited liability company, with an address of 3414 Peachtree Road, N.E., Suite 300, Atlanta, Georgia 30326, U.S.A. (herein called "Operator").

W I T N E S S E T H:

Owner and Operator have entered into that certain Operating Agreement dated of even date herewith (herein the "Operating Agreement") with respect to operation of a luxury hotel on the premises located in New York, New York, as more particularly described on Exhibit "A" attached hereto (the "Premises").

The Operating Agreement is for a term commencing on the Commencement Date (as defined in the Operating Agreement) and shall continue thereafter for a period of twenty-five (25) years, subject to extension or early termination as set forth therein. The Operating Term may be extended for two (2) additional periods of ten (10) years each, pursuant to the terms of the Operating Agreement.

Except as expressly provided in the Operating Agreement, Owner shall not consummate any Ownership Transfer (as that term is defined in the Operating Agreement).

This Memorandum is subject to all of the terms, conditions and understandings set forth in the Operating Agreement, which agreement is incorporated herein by reference and made a part hereof, as though copied verbatim herein. In the event of a conflict between the terms and conditions of this Memorandum and the terms and conditions of the Operating Agreement, the terms and conditions of the Operating Agreement shall prevail.

IN WITNESS WHEREOF, Owner and Operator have caused this Memorandum to be executed under seal by their duly authorized representatives as of the day, month and year first above written, for the purpose of providing an instrument for recording and giving notice of the Operating Agreement.

OPERATOR:

[CORPORATE SEAL] THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,
a Delaware limited liability company

By: _____
Name:
Title:

OWNER:

[CORPORATE SEAL] MILLENNIUM BPC DEVELOPMENT LLC,
a New York limited liability company
By: Millennium Partners LLC, its sole member
By: Millennium Partners Management LLC
By: Millennium Manager I, Inc.

By:_____
Name:
Title:

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the _____ day of _____, 19___, before me, the undersigned, a Notary Public, in and for the State of _____, personally appeared _____, to me personally known, who being by me duly sworn did say that he is the _____ of The Ritz-Carlton Hotel Company, L.L.C., executing the within and foregoing instrument, and that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Management Committee; and that the said _____ as such officer acknowledged the execution of said instrument to be the voluntary act and deed of the corporation by it and by him voluntarily executed.

_____
Notary Public,

My commission expires:

_____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____, 19___, before me, the undersigned, a Notary Public, in and for the State of _____, personally appeared _____, to me personally known, who being by me duly sworn did say that _____ is the _____,of _____,executing the within and foregoing instrument, and that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said _____as such officer acknowledged the execution of said instrument to be the voluntary act and deed of the corporation by it and by him voluntarily executed.

_____
Notary Public

My commission expires:

_____

EXHIBIT "A" TO
MEMORANDUM OF OPERATING AGREEMENT

(ATTACH LEGAL DESCRIPTION)

SCHEDULE A

(COVER PREMISES AND MORE)

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

BEGINNING at the point of the intersection of the northerly line of Battery Place, as shown on a map approved by a resolution adopted by the Board of Estimate on November 13, 1981, said map bearing Acc. No. 30071, with the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line approved July 31, 1941, the coordinates of which point are North 1992.195, West 9823.082;

RUNNING THENCE along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line approved July 31, 1941 the following 4 courses and distances:

1) North 12 degrees 24 minutes 38 seconds West a distance of 126.46 feet to an angle point, the coordinates of which are North 2115.699, West 9850.260;

2) North 12 degrees 26 minutes 10 seconds West a distance of 518.56 feet to an angle point, the coordinates of which are North 2622.094, West 9961.933;

3) North 12 degrees 14 minutes 44 seconds West a distance of 24.60 feet to an angle point, the coordinates of which are North 26.46 feet to an angle point, the coordinates of which are North 2646.131, West 9967.150;

4) North 12 degrees 23 minutes 50 seconds West a distance of 379.60 feet to the point of intersection of the southerly line of West Thames Street with the westerly line of Marginal Street, Wharf or Place and the Unites States Bulkhead Line approved July 31, 1941, the coordinates of which point are North 3016.877, West 10048.645;

THENCE North 90 degrees 00 minutes 00 seconds East along the prolongation easterly of the southerly line of West Thames Street, a distance of 47.10 feet to a point, the coordinates of which are North 3016.877, West 10001.547;

THENCE South 12 degrees 23 minutes 50 seconds East a distance of 369.57 feet to a point, the coordinates of which are North 2655.926, West 9922.205;

THENCE South 12 degrees 14 minutes 43 seconds East a distance of 24.56 feet to a point, the coordinates of which are North 2631.927, West 9916.996;

THENCE South 12 degrees 26 minutes 10 seconds East a distance of 518.49 feet to a point, the coordinates of which are North 2125.605, West 9805.339;

SCHEDULE A - continued

THENCE South 12 degrees 24 minutes 38 seconds East a distance of 139.37 feet to a point, the coordinates of which are North 1989.496, West 9775.387, said point being in the prolongation easterly of the arc of a circle forming the northerly line of said Battery Place which intersects the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line approved July 31, 1941, distance 47.81 feet easterly from said point of intersection as measured along the prolongation easterly of the arc of a circle forming the northerly line of said Battery Place;

THENCE westerly along the last mentioned arc of a circle, bearing to the right, which has a radius of 338 feet, a distance of 47.81 feet to the point or place of BEGINNING.

For conveyancing only, if intended to be conveyed.

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises, to the center line thereof.

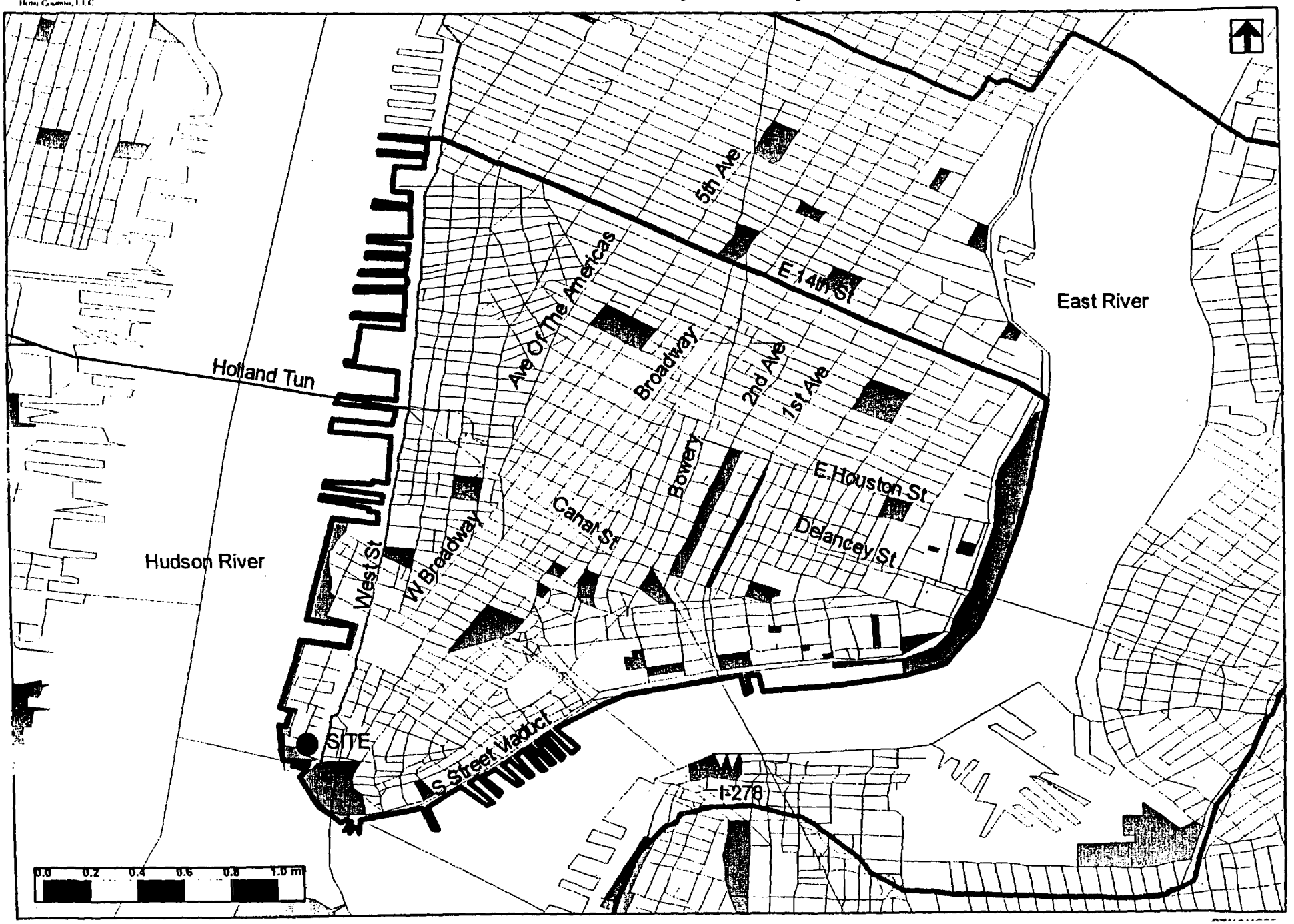
Date Printed July 13, 1999

EXHIBIT "B"

TRADE AREA - RESTRICTED AREA

THE RITZ-CARLTON®

Territorial Restriction
Ritz-Carlton Battery Park City



Development GIS
MCB

EXHIBIT "C"

CREDO



THE RITZ-CARLTON®
HOTEL COMPANY, L.L.C.

CREDO

The Ritz-Carlton Hotel is a place where the genuine care and comfort of our guests is our highest mission.

We pledge to provide the finest personal service and facilities for our guests who will always enjoy a warm, relaxed yet refined ambience.

The Ritz-Carlton experience enlivens the senses, instills well-being and fulfills even the unexpressed wishes and needs of our guests.

© 1994, The Ritz-Carlton Hotel Company. All rights reserved.

EXHIBIT "D"

GROUND LEASE

[To Be Attached Upon Execution]

EXHIBIT "E"

LEGAL DESCRIPTION OF THE PREMISES

SCHEDULE A

(COVER PREMISES AND MORE)

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THENCE North 90 degrees 00 minutes 00 seconds East along the prolongation easterly of the southerly line of West Thames Street, a distance of 47.10 feet to a point, the coordinates of which are North 3016.877, West 10001.547;

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THENCE westerly along the last mentioned arc of a circle, bearing to the right, which has a radius of 338 feet, a distance of 47.81 feet to the point or place of BEGINNING.

For conveyancing only, if intended to be conveyed

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises, to the center line thereof.

Date Printed July 13, 1999

MEMORANDUM OF OPERATING AGREEMENT

THIS MEMORANDUM OF OPERATING AGREEMENT is made and entered into as of this day of August 31, 1999 by and between Millennium BPC Development LLC, a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at c/o Millennium Partners LLC, 1995 Broadway, Third Floor, New York, New York 10023 (herein called "Owner") and THE RITZ-CARLTON HOTEL COMPANY, L.L.C., a Delaware limited liability company, with an address of 3414 Peachtree Road, N.E., Suite 300, Atlanta, Georgia 30326, U.S.A. (herein called "Operator").

WITNESSETH:

Owner and Operator have entered into that certain Operating Agreement dated of even date herewith (herein the "Operating Agreement") with respect to operation of a luxury hotel on the premises located in New York, New York, as more particularly described on Exhibit "A" attached hereto (the "Premises").

The Operating Agreement is for a term commencing on the Commencement Date (as defined in the Operating Agreement) and shall continue thereafter for a period of twenty-five (25) years, subject to extension or early termination as set forth therein. The Operating Term may be extended for two (2) additional periods of ten (10) years each, pursuant to the terms of the Operating Agreement.

Except as expressly provided in the Operating Agreement, Owner shall not consummate any Ownership Transfer (as that term is defined in the Operating Agreement).

This Memorandum is subject to all of the terms, conditions and understandings set forth in the Operating Agreement, which agreement is incorporated herein by reference and made a part hereof, as though copied verbatim herein. In the event of a conflict between the terms and conditions of this Memorandum and the terms and conditions of the Operating Agreement, the terms and conditions of the Operating Agreement shall prevail.

IN WITNESS WHEREOF, Owner and Operator have caused this Memorandum to be

executed under seal by their duly authorized representatives as of the day, month and year first above written, for the purpose of providing an instrument for recording and giving notice of the Operating Agreement.

OPERATOR:

[CORPORATE SEAL] THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,
a Delaware limited liability company

By: _____
Name: Kevin M. Kimball
Title: Vice President

OWNER:

[CORPORATE SEAL] MILLENNIUM BPC DEVELOPMENT LLC,
a New York limited liability company
By: Millennium Partners LLC, its sole member
By: Millennium Partners Management LLC
By: Millennium Manager I, Inc.

By: _____
Name: Brian Collins
Title: Vice President

ACKNOWLEDGMENT

STATE OF Maryland)
) ss.
COUNTY OF Montgomery)

On the 31st day of August, 19 99, before me, the undersigned, a Notary Public, in and for the State of Maryland, personally appeared Kevin Kimball, to me personally known, who being by me duly sworn did say that he is the Vice President of The Ritz-Carlton Hotel Company, L.L.C., executing the within and foregoing instrument, and that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Management Committee; and that the said Kevin Kimball as such officer acknowledged the execution of said instrument to be the voluntary act and deed of the corporation by it and by him voluntarily executed.

Maryann R Spencer
Notary Public,

My commission expires:
January 1, 2001

ACKNOWLEDGMENT

STATE OF Maryland)
) ss.
COUNTY OF Montgomery)

On the 31st day of August, 19 99, before me, the undersigned, a Notary Public, in and for the State of Maryland, personally appeared Brian Collins, to me personally known, who being by me duly sworn did say that Brian Collins is the Vice President, of Millennium BPC Development, executing the within and foregoing instrument, and that the seal affixed thereto is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said Brian Collins as such officer acknowledged the execution of said instrument to be the voluntary act and deed of the corporation by it and by him voluntarily executed.

Maryann R Spencer
Notary Public

My commission expires:
January 1, 2001

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EXHIBIT "A" TO
MEMORANDUM OF OPERATING AGREEMENT

(ATTACH LEGAL DESCRIPTION)

SCHEDULE A

(COVER PREMISES AND MORE)

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Date Printed July 13, 1999

THE RITZ-CARLTON®
HOTEL COMPANY, L.L.C.

August 31, 1999

Brian Collins
Millennium BPC Development LLC
c/o Millennium Partners LLC
1995 Broadway
Third Floor
New York, New York 10023

Re: The Ritz-Carlton, Downtown New York and the Residences at the Ritz-Carlton, Downtown New York (collectively, the "Project")

Dear Brian:

Reference is made to the following documents related to the Project: (i) the Operating Agreement ("Operating Agreement"), Pre-Commencement Agreement and Condominium Marketing License Agreement (the foregoing documents shall be referred to collectively herein as the "Hotel Documents"), dated as of the date hereof, between Millennium BPC Development LLC ("Owner") and The Ritz-Carlton Hotel Company, L.L.C. ("Operator") and (ii) the Condominium Submanagement Agreement (the "Submanagement Agreement"), dated as of the date hereof, between Millennium Partners BPC Management LLC ("Millennium Management") and Operator.

The undersigned entities acknowledge that the obligations of (1) Owner and Operator under the Hotel Documents and (2) Operator and Millennium Management under the Submanagement Agreement, are subject to and conditioned upon the fulfillment of the following obligations:

1. Owner shall enter into a Ground Lease with the Battery Park City Authority to obtain a leasehold interest in the premises on which the Project will be constructed (subject to Operator's approval rights as set forth in the Operating Agreement);
2. Operator shall enter into a Non-Disturbance Agreement or similar agreement in a form reasonably acceptable to Operator with respect to Operator's rights under the Ground Lease.
3. Owner and Marriott International Capital Corporation ("MICC") shall execute those documents related to the parties' Cash Flow Guaranty Agreement as are required under the terms of the Cash Flow Guaranty Agreement commitment letter, dated as of the date hereof, between Owner and MICC.

Malcolm Baldrige National Quality Award 1992 Winner

In the event that the above-listed obligations are not fulfilled by December 31, 1999, either Owner or Operator shall have the right to terminate the Hotel Documents, and either Operator or Millennium Management shall have the right to terminate the Submanagement Agreement, by delivering to the other party written notice stating that such party elects to exercise its right to terminate the Hotel Documents, or, as the case may be, the Submanagement Agreement, pursuant to the provisions of this letter agreement.

In addition, the parties acknowledge that Owner is currently contemplating a transaction whereby Owner would syndicate the ownership of the Project and Owner's obligations under the Hotel Documents to various investors, including several German insurance concerns (the "ProVictor Transaction"). If Owner consummates the ProVictor Transaction in a form that is substantially similar to the ProVictor Transaction contemplated by the parties on the date set forth above, then Owner and Operator agree that such ProVictor Transaction shall not constitute an Ownership Transfer, as such term is defined in the Operating Agreement, and shall not be subject to Operator's right of first negotiation under Section 12.2 of the Operating Agreement.

If the foregoing is consistent with your understanding, please indicate your assent thereto by signing this letter where indicated below and returning to us a copy of this letter.

Sincerely yours,

Ritz-Carlton Hotel Company, L.L.C.

By: Kevin Kimball

Name: Kevin M. Kimball

Title: Vice President

AGREED TO AND ACCEPTED
as of this 31st day of August, 1999:

Millennium BPC Development LLC

By: [signature]

Name: Brian Collins

Title: Vice President

Millennium Partners BPC Management LLC

By: _____

Name: Brian Collins

Title: Vice President

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PRE-COMMENCEMENT AGREEMENT

between

MILLENNIUM BPC DEVELOPMENT LLC,
as Owner

and

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,
as Operator

Covering THE RITZ-CARLTON, Downtown New York

DATED: August 31, **1999**

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August 31, 1999

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PRE-COMMENCEMENT AGREEMENT

THIS PRE-COMMENCEMENT AGREEMENT ("Agreement") is made and entered into as of the 31 day of August, 1999 ("Effective Date"), by and between MILLENNIUM BPC DEVELOPMENT LLC, a New York limited liability company (hereinafter referred to as "Owner") and THE RITZ-CARLTON HOTEL COMPANY, L.L.C., a Delaware limited liability company (sometimes hereinafter referred to as "Operator");

WITNESSETH:

WHEREAS, Owner and Operator have simultaneously with the execution of this Agreement entered into and executed a certain Operating Agreement dated as of the date hereof (hereinafter referred to as the "Operating Agreement") whereby Owner has engaged Operator as the exclusive operator of a luxury hotel to be constructed in New York, New York, and to be known as "The Ritz-Carlton, Downtown New York" (the "Hotel"); and

WHEREAS, Owner acknowledges that a Ritz-Carlton hotel is a first class luxury hotel as to (i) design, appearance and quality of the building and related improvements, (ii) the appearance, quality and function of the furniture, fixtures and equipment, and (iii) the staffing and operation of the Hotel itself; and

WHEREAS, it is anticipated that the Hotel will be constructed as part of a mixed-use condominium project (the "Condominium") at Battery Park City Site #1, New York, New York, which will also contain: (i) approximately 150 residential units (the "Residences") and (ii) retail space; and

WHEREAS, Operator (or one of its Affiliates) will manage the Residences under a separate "Condominium Submanagement Agreement" which will be entered into between Operator and Millennium Partners BPC Management LLC; and

WHEREAS, Owner and Operator have agreed upon certain technical services to be provided by Operator with regard to: (i) the design, construction and finishes of the Hotel and the Residences; (ii) the design and procurement of the furniture, fixtures and equipment for the Hotel; and (iii) the recruiting and training of the operating staff so that the Hotel, when open for business, shall in all respects meet the requirements and standards of a first class luxury hotel and of the Operator, all as more fully set forth herein.

NOW, THEREFORE, in consideration of the execution of the Operating Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Operator covenant and agree as follows:

ARTICLE 1.

DEFINITIONS AND GENERAL MATTERS

1.1. Definitions. In this Agreement (including any addenda or exhibits) the following terms shall have the following meanings. All terms not specifically defined in this Agreement shall have the meanings ascribed thereto in the Operating Agreement, which is incorporated herein by this reference.

"Agreement" shall mean this Pre-Commencement Agreement.

"Approval," "Approve" or "Approved" shall mean prior written approval or consent, which, unless otherwise specified herein, shall not be unreasonably withheld, conditioned or delayed.

"Commencement Date" shall mean the first day on which the Hotel is open for business.

"Condominium" shall have the meaning set forth in the Recitals.

"Contractor(s)" shall mean the prime contractor or contractors hired by Owner to construct the Project and, where the context requires, such subcontractors as are hired by any Contractor(s).

"Development Period" shall mean the period of time beginning with the initial technical service conference described in Section 1.2 hereof and ending upon the Commencement Date.

"Effective Date" shall have the meaning set forth in the Preamble.

"Environmental Laws" means any rules, regulations, laws, and/or other enactments now or hereafter in effect and applicable to the Project or to activities carried on with respect to the Project (whether of a national, regional, state, or local government, agency, or instrumentality), dealing with the use, generation, treatment, storage, disposal, or abatement of Hazardous Materials.

"Extraordinary Event" means any of the following events, regardless of where it occurs or its duration: acts of nature without the interference of any human agency (including hurricanes, typhoons, tornados, cyclones, other severe storms, winds, lightning, floods, earthquakes, volcanic eruptions, disease, epidemic and certain fires and explosions); fires and explosions caused wholly or in part by human agency; acts of war; riots or other civil

commotion; terrorism (including hijacking, sabotage, bombing, murder, assault and kidnapping); strikes or similar labor disturbances; shortage of critical materials or supplies; action or inaction of governmental authorities having jurisdiction over the Hotel (including, without limitation, court delays); and any other events beyond the control of Owner or Operator.

"Facade Drawings" shall mean those certain elevations and preliminary design drawings of the exterior facade of the Hotel which have been submitted to Operator by Owner prior to the Effective Date.

"Furniture and Equipment" shall mean all furniture, furnishings, wall coverings, fixtures and hotel equipment and systems located at, or used in connection with the Hotel, together with all replacements therefor and additions thereto, including, without limitation, (i) all equipment and systems required for the operation of kitchens, bars, laundry and dry cleaning facilities, (ii) office equipment, (iii) dining room wagons, material handling equipment, cleaning and engineering equipment, (iv) telephone and computerized accounting systems and (v) vehicles.

"Hazardous Materials" means any substance or material containing one or more of any of the following: hazardous material, hazardous waste, hazardous substance, regulated substance, petroleum, pollutant, contaminant, or asbestos, as such terms are, as of the Effective Date or thereafter, defined in any applicable Environmental Law, in such concentration(s) or amount(s) as will require clean-up or removal, or which may present a significant risk of harm to guests, invitees, or employees of the Hotel.

"Hotel" shall have the meaning set forth in the Recitals; for all purposes of this Agreement, the term "Hotel" shall also include the common, public areas (lobbies, walkways, corridors, elevators, etc.) of the Residences.

"Master Budget" shall have the meaning set forth in Section 4.1.3.

"Mechanical Installations" shall mean the items described in Subparagraph 2.1.1(g)(ii).

"Operating Agreement" shall have the meaning set forth in the Recitals.

"Operator" shall have the meaning set forth in the Preamble.

"Owner" shall have the meaning set forth in the Preamble.

"Pre-Opening Account" shall mean a special account or accounts, bearing the name of the Hotel, established by Operator in a bank or trust company selected by Operator.

"Pre-Opening Budget" shall have the meaning set forth in Section 5.2.

"Pre-Opening Expenses" shall mean those expenses incurred prior to and after the Commencement Date which are necessary to the preparation of the Hotel for operation, including, but not limited to, salaries and wages, costs of interim office space, furniture, equipment and systems, professional fees, telephone expenses, staff hiring and training costs, travel and moving expenses, costs of entertainment, opening celebrations and functions (including food, beverage, labor and room accounts of invitees), the cost of heat, light, power and clean-up expenses not chargeable to the cost of acquiring or constructing the Hotel, advertising, public relations and promotion expenses, employee benefits and meals prior to opening, classified advertising, agency fees and recruitment costs, pro rata costs of Operator or its Affiliates in performing such services including personnel cost and expense allocated in a reasonable manner, and other associated and miscellaneous expenses. To the extent Pre-Opening Expenses are paid out of the Pre-Opening Account, Pre-Opening Expenses shall not be included in Gross Operating Expenses.

"Project" shall mean the development project which includes, without limitation, (i) the design, construction, equipping and staffing of the Hotel in accordance with the Ritz-Carlton Standards; and (ii) the design, construction and finishes of the non-public areas of the Residences in accordance with the Residential Standards; and (iii) the design, construction and finishes of all of the common areas and the public circulation areas of the remainder of the Condominium in accordance with the Ritz-Carlton Standards.

"Reimbursable Expenses" shall mean the actual expenses incurred by Operator, directly or indirectly, in connection with the Project (whether before or after the execution of this Agreement), including, but not limited to: transportation and subsistence incidental thereto; toll telephone calls, facsimiles, postage and use of courier services; photocopying and reproduction by other means of reports, drawings, specifications and similar Project-related documents; computer time and the use of word-processing and other highly specialized equipment; and fees paid by Operator to independent consultants for their services and expenses.

"Residences" shall have the meaning set forth in the Recitals.

"Residential Standards" shall mean the standards of quality (as opposed to style or aesthetics) which are applicable to the design, construction and finishes of the Residence, which standards shall be of a similar or better quality than those of the Selected Residential Buildings.

"Ritz-Carlton Standards" shall have the meaning set forth in Section 2.1.1(c) hereof.

"Selected Residential Buildings" shall mean those luxury residential condominium buildings, located within the city of New York, New York, which Operator shall

select; Operator shall give Owner a written notice of the Selected Residential Buildings, which notice shall be delivered to Owner within ninety (90) days after the Effective Date.

"Title Policy" shall mean the title insurance policy which Owner has obtained with regard to the Premises and the improvements thereon, a copy of which has been delivered to Operator.

1.2. Initial Technical Service Conference. As soon as reasonably possible after the execution of this Agreement, but in no event later than thirty (30) days from the date hereof, Owner shall arrange with Operator a meeting of key personnel involved in the Project at Operator's corporate offices in Atlanta, Georgia. The key personnel shall include the senior member of the Owner's team and the Owner's project director. Operator's key personnel shall include its design and construction personnel and Furniture and Equipment representatives.

The purpose of the meeting shall be to review (i) the status of the Project; and (ii) the Ritz-Carlton Standards as applied to the Hotel and to its appurtenances, and the Furniture and Equipment; and (iii) the Residential Standards as applied to the Residences.

At or prior to the meeting, Owner and Operator shall (i) prepare and exchange organization and communication charts, (ii) review Owner's preliminary Project schedule, and (iii) review Owner's design team selection process.

ARTICLE 2

BASIC TECHNICAL SERVICES

2.1. Pre-Construction Period.

2.1.1. Preliminary Information Phase. Operator shall:

(a) Furnish, upon request, to Owner examples of Operator's forms and documents used in connection with the construction of the Hotel and purchasing of Furniture and Equipment and Fixed Asset Supplies, completion of which will be assisted by Operator;

(b) Furnish to Owner all "Ritz-Carlton" logos and standard publication criteria for use by Owner, upon receipt of Operator's approval (which Operator may withhold in its sole discretion), in Owner's publications;

(c) Furnish to Owner copies of the following documents (dated April 5, 1999) (collectively, the "Ritz-Carlton Standards") for use by the Owner's design team. Owner

acknowledges that, as of the Effective Date, Owner has received the following documents. The documents include:

SECTION I	STANDARDS AND GUIDELINES FOR DESIGN AND CONSTRUCTION OF A RITZ-CARLTON HOTEL
SECTION II	TYPICAL FINISH SCHEDULE FOR A RITZ-CARLTON HOTEL
SECTION III	CLASSIFICATION OF RESPONSIBILITIES FOR CONSTRUCTION OF A RITZ-CARLTON HOTEL
SECTION IV	STANDARDS AND GUIDELINES FOR FURNISHINGS, FIXTURES AND EQUIPMENT OF A RITZ-CARLTON HOTEL

Operator may amend the Ritz-Carlton Standards, in accordance with the Operating Agreement, from time to time in the future, but such changes shall not (i) result in a reduction in quality from those presently in effect as determined with reference to the tradition established by The Ritz-Carlton, San Francisco, or (ii) be applied in an arbitrary manner to the Hotel;

(d) Furnish to Owner Operator's Facilities Program describing the space requirements for all areas of the Hotel (e.g., guestrooms, public spaces, kitchen, laundry, back office, etc.);

(e) Furnish to Owner, upon request, Operator's personnel staffing guide for use by Owner's architects in development of space utilization program;

(f) Furnish to Owner a summary of requirements for the design, scheduling and installation of hotel management and accounting systems, including without limitation, telephone, property management, point of sales, energy management, security, sound, cable television, beeper-pager, sales system, personnel system, engineering system and audio-visual system or facilities; and

(g) Furnish to Owner a sampling of the names of manufacturers and suppliers who are acceptable to Operator for:

(i) Interior design materials;

(ii) Manufacturers and suppliers of equipment for the systems described in Paragraph 2.1.1 (f) above, as well as for heating, ventilation, air conditioning, electrical power supply and distribution, lighting, elevators, hardware and

keying (collectively, the "Mechanical Installations"), which are acceptable to Operator; and

(iii) Experienced suppliers of kitchen, bar and laundry equipment.

Owner's choice of a supplier other than one recommended by Operator must be Approved by Operator in its sole discretion.

2.1.2. Preliminary Design Phase. Operator shall in the concept and schematic design phase:

(a) Provide preliminary assistance to Owner's consultants and Contractor(s) by providing the following:

(i) Suggestions to Owner's interior designers regarding space planning, theme treatments, the functional layouts and lighting of guest rooms, public areas, restaurants, bars, ballrooms and other public and guest areas;

(ii) Suggestions to Owner's planners, architects and landscape architects regarding site planning, exterior environment and recreational facilities;

(iii) Suggestions to Owner's architects regarding overall plan organization, structure and building exterior;

(iv) Suggestions to Owner's interior designers and mechanical engineers regarding HVAC distribution in the guest and public spaces; and

(v) Assistance to Owner's mechanical, plumbing and electrical consultants in the development of the master plan for all Mechanical Installations.

(b) Review the following documents as prepared by Owner, or on Owner's behalf, by its consultants and Contractor(s):

(i) Detailed Project description and as - designed space utilization program prepared by Owner's architects and engineers in Operator's format;

(ii) Owner's architectural and engineering standards;

(iii) Preliminary furniture layouts, reflected ceiling plans, interior designs regarding layout plans, elevations, materials, lighting, coordination for HVAC distribution and color schemes;

(iv) Preliminary lighting requirements prepared by Owner's interior designer and electrical engineering consultants;

(v) Preliminary plans and outline specifications for the Hotel, including, but not limited to, architectural, exterior environment (civil, landscape, hardscape) mechanical, electrical, plumbing, building systems and miscellaneous services; and

(vi) Preliminary plans and equipment lists for kitchen, bar and laundry equipment.

(c) Assist Owner's architects, interior designer and other consultants in the development of schematic plans for the Project, the review of graphic program illustration sketches for the Project and the review of detailed preliminary plans for the Project.

(d) To the extent the Master Budget is not adequately itemized, assist Owner in further budget itemization, and advise Owner as to the adequacy of selected portions of such budget within Operator's expertise.

(e) Upon incorporation of the Operator's review comments of the conceptual and schematic design submittal, a formal presentation of the design concept and the proposed finishes for the exterior environment, architecture and interior design shall be made at Operator's corporate offices in Atlanta, Georgia prior to final Approval of this phase by Operator. The parties hereby stipulate that, as of the Effective Date, the appearance of the exterior facade of the Hotel (as set forth in the Facade Drawings) has been mutually Approved by Owner and Operator; the various stages of the design of such facade which are to be Approved by Operator, after the Effective Date, in accordance with this Agreement, shall therefore only relate to the functionality of such facade, since the appearance of such facade will be as set forth in the Facade Drawings.

2.1.3. Design Development Phase. Operator shall:

(a) Provide assistance to Owner's consultants and Contractor(s) by providing the following:

(i) Suggestions to Owner's consultants regarding the operational requirements of the various functions; and

(ii) Suggestions to Owner's consultants regarding design organization within each space and system.

(b) Review the following documents as prepared by Owner, or on Owner's behalf, by its consultants and Contractor(s);

(i) Detailed Project description and as designed space utilization program prepared by Owner's architects and engineers in Operator's format;

(ii) Detailed Master Budget;

(iii) Owner's architectural and engineering standards;

(iv) The detailed development of plans and specifications for the Project, site and all related facilities and services, including, but not limited to, architectural, interior design, exterior environment and recreation;

(v) Interior designer's plans, furniture layouts, reflected ceiling plans, interior elevations, wall sections, materials, lighting and color schemes;

(vi) Interior designer's and mechanical engineer's design of HVAC distribution;

(vii) Interior designer's and electrical engineer's coordination of lighting and emergency lighting and alarm systems;

(viii) Review of lighting layouts for such areas including specific fixture selection in catalog reference or design form, and recommendations on and specifications of dimmer equipment; and

(ix) Engineering drawings indicating locations and sizes of necessary mechanical connections for kitchen, bar and laundry equipment.

(c) Assist Owner's interior designers in the review of its specifications for carpeting, furniture, draperies, fabrics and wallcoverings, and assist Owner's interior designers in the review of purchase specifications for furniture and other furnishings, and provide Owner's interior designers with all available interior finish guidelines (such as millwork) and other applied finishes.

(d) Assist Owner in establishing procedures for preparation of Furniture and Equipment specifications.

(e) Assist Owner's architects and other consultants in the review of their design development documents for the Project, the review of graphic program illustration sketches for the Project and the review of detailed plans for the Project.

(f) To the extent the Master Budget is not adequately itemized, assist Owner in further budget itemization, and advise Owner as to the adequacy of selected portions of such budget within Operator's expertise.

(g) Upon incorporation of the Operator's review comments of the design development submittal, a formal presentation of the design concept and the proposed finishes for the exterior environment, architecture and interior design is to be made at Operator's corporate offices in Atlanta, Georgia prior to final Approval of this phase by Operator.

2.1.4. Final Design Phase. Operator shall:

(a) Review the following documents as prepared by Owner's consultants and Contractor(s):

(i) Final set of architectural plans and specifications;

(ii) Interior designers' working drawings for all interiors;

(iii) Final lighting layouts for guest rooms, restaurants, bars, ballrooms, private dining rooms, lobbies, facade and outdoor landscaped areas, including fixture selection in catalog reference or design form and specifications for dimmer equipment;

(iv) Final plans and specifications for all Mechanical Installations, plumbing and electrical installations, as prepared by mechanical consultants;

(v) Specifications for all items of furniture, fixtures, equipment, systems and supplies;

(vi) Interior and graphic design regarding design work and art work for folders, brochures, menus, interior and exterior signage (including the crest and symbol of the Hotel), flatware, china, crystal, linens and uniforms;

(vii) Layouts for kitchen, bar and laundry equipment with specifications thereon (said layouts to be in a form suitable for Owner to receive bids);

(viii) Purchasing specifications for office equipment, material handling equipment, cleaning equipment, engineering equipment, shelving and lockers, dining room wagons, vehicles, engineering tools, kitchen utensils, dining room utensils, uniforms, housekeeping tools, china, silver, glass, linen and glassware, including specifications or catalog data and proposed quantities;

(ix) Owner's recommendations of experienced suppliers;

(x) Owner's analysis of bids with respect to specification and comparative costs; and

(xi) Owner's review of detailed "shop" drawing submitted by the successful bidder.

(b) To the extent the Master Budget is not adequately itemized, assist Owner in further budget itemization, and advise Owner as to the adequacy of selected portions of such budget within Operator's expertise.

(c) Upon incorporation of the Operator's review comments of the Final Design Phase a formal presentation of the design and the proposed finishes for the exterior environment, architecture and interior design including samples of all finishes (marble, millwork, fabrics, etc.) is to be made at Operator's corporate offices in Atlanta, Georgia prior to final Approval of this phase by Operator.

2.1.5. Bidding or Negotiating Phase. Operator shall:

(a) Consult with and advise Owner as to the acceptability of Contractors, subcontractors and other persons and organizations proposed by the Contractor(s);

(b) Consult with and advise Owner as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution, prior to the award of contracts, is allowed by the bidding documents;

(c) At Owner's request, assist Owner in evaluating bids or proposals, based on comparisons of specifications and costs, submitted by suppliers and Contractor(s), and in reviewing such bids relative to the master project budget, to the extent of Operator's expertise; and

(d) At Owner's request, assist Owner in review of the construction contract with the general contractor and in a review of awards of contracts and purchase orders, to the extent of Operator's expertise.

2.2. Construction Period. Operator shall:

2.2.1. Review. Review all documents prepared for Owner by its architects, engineers, interior designers, electrical engineering consultants, plumbing consultants, mechanical consultants or graphic designers, and all other design team consultants, as the case may be, at the following times:

(a) The point of issuance of all revisions or bulletins with respect to the work performed pursuant to such documents;

(b) The point at which the work performed pursuant to such documents must be coordinated and integrated with the interior design documents;

(c) On-site observation of layouts and examination of selected fixtures and finishes; and

(d) The point of completion, as defined in Owner's construction contract, of the work performed pursuant to such documents.

2.2.2. Shop Drawing and Submittal Review. Review selected shop drawings, submittals, samples and finishes prepared for the Owner by its Contractor(s) and suppliers.

2.2.3. Equipment Start-up. Advise Owner of the timing of key equipment "start-up" sessions so that Owner may arrange for attendance by the equipment manufacturers' representatives.

2.2.4. Scheduling. Cooperate with Owner in the scheduling of deliveries of Furniture and Equipment.

2.2.5. Project Visits. Make visits to the Project site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed work of Contractor(s) and of Owner's various consultants, and to determine in general if such work is proceeding as follows: (a) in accordance with Owner's documents; and (b) with respect to the Hotel, in accordance with the Ritz-Carlton Standards; and (c) with respect to the Residences, in accordance with the Residential Standards. Operator shall not be required to make exhaustive or continuous on-site inspections to monitor the quality or quantity of such work. Operator shall not be responsible for the means, methods, techniques or procedures of construction selected by Contractor(s) or Owner's consultants or the safety precautions or programs incident to the work of Contractor(s) or Owner's consultants. Operator's efforts will be directed toward providing a greater degree of confidence for Owner that the completed work of Contractor(s) and Owner's consultants will conform to (x) Owner's documents; (y) with respect to the Hotel, to the Ritz-Carlton Standards; and (z) with respect to the Residences, the Residential Standards; but Operator shall not be responsible for the failure of Contractor(s) or Owner's consultants to perform the construction work in accordance therewith. During such visits to the site and on the basis of its on-site observations, Operator shall keep Owner informed, by means of written reports to Owner, of the progress of the work, shall endeavor to guard Owner against defects and deficiencies in the work (but shall not be liable to Owner or to any other entity for any failure so to do) and may disapprove or reject work failing to conform to Owner's documents or to the Ritz-Carlton Standards (with respect to the Hotel) or to the Residential Standards (with respect to the Residences).

2.2.6. Inspection. Upon notification by Owner that an area of the Project is complete, and prior to the opening of said area, Operator shall inspect the area and create a punchlist of items requiring additional or corrective work.

2.3. Commencement Date.

The projected Commencement Date shall be no later than December 1, 2002 (which date shall be subject to extension for a period of time equal to the duration of any Extraordinary Events, provided that the cumulative total amount of such extension shall not exceed twelve (12) months). However, the actual Commencement Date shall be determined by Operator and in no event shall be earlier than the date upon which all elements of the Hotel have been substantially completed in accordance with the plans and specifications Approved by Operator (including installation of all Furniture and Equipment and Inventories as Approved by Operator) and are ready, in Operator's reasonable opinion, for their intended use as a Ritz-Carlton operation. Owner agrees that on the Commencement Date there will be no ongoing construction on any portion of the Project which would materially, adversely affect access to the Hotel, or which would otherwise materially, adversely limit, restrict, disturb or interfere with Operator's operation of the Hotel in accordance with the Ritz-Carlton Standards.

2.4. Post-Completion Period. Operator shall:

2.4.1. Review. Review and Approve all documents prepared for Owner by its architects, engineers, interior designers, electrical engineering consultants, plumbing consultants, mechanical consultants, lighting consultants or graphic designers, and all other design team consultants, as the case may be, at the following times:

(a) the point of inclusion therein of all "as-built" information; and

(b) the point of submission of all operating manuals, drawings, technical information, warranties and guaranties.

2.4.2. Report. Furnish to Owner a completed Project punchlist within forty-five (45) days after the Commencement Date delineating the specific areas of the Project disapproved or rejected by Operator as provided in Paragraph 2.2.6. and setting forth the grounds for such disapproval or rejection.

ARTICLE 3.

PROCUREMENT OF FURNITURE AND EQUIPMENT

3.1. General Matters. Owner acknowledges that the Furniture and Equipment is an integral part of the Ritz-Carlton Standards and must be coordinated with the design and construction of the Project. Owner further acknowledges that Operator has experience and expertise in the selection and purchasing of Furniture and Equipment for its hotels. Owner hereby agrees that it shall not make any commitments with regard to the procurement of Furniture and Equipment until after it has reviewed the Furniture and Equipment guidelines with Operator.

3.2. Contract Purchaser. Owner shall solicit bids for the services of third party consultants or contractors to procure the Furniture and Equipment. Operator shall perform the review function set forth herein and shall cooperate in good faith in the procurement process. Owner shall provide Operator with all budgets and takeoffs of Furniture and Equipment.

(a) Operator reserves the right of Approval of all Furniture and Equipment suppliers; and

(b) Owner acknowledges that Operator shall not be obligated to perform procurement functions beyond the review and approval process set forth in this Section 3.2 and shall not be obligated to make available to the consultant or Contractor any of its staff or proprietary information.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1. Pre-Construction Period.

4.1.1. Engagements. Owner shall engage and retain, at no expense to Operator, such architect, specialist engineer, interior designer, electrical engineering consultant, lighting consultant, mechanical consultant, laundry, kitchen, back of house consultant, landscape and pool consultant, elevator consultant, systems designers, graphic designer and all other consultants that may be required, as well as related Contractor(s) (each of whom shall be Approved by Operator), as shall be necessary and appropriate in connection with the design, planning and construction of the Project. Operator may request certain consultants be engaged by Owner for specific needs beyond those that may be normally anticipated in the design of a hotel, and Owner hereby accepts and approves Operator's requests for such additional consultants.

4.1.2. Information. If requested by Operator, Owner shall do the following and pay all costs incident thereto:

(a) Cause to be prepared with respect to the Project full and adequate plans and specifications meeting the Ritz-Carlton Standards and shall furnish copies of each thereof to Operator for its Approval. Owner shall, in accordance with plans, specifications, budgets and financing Approved by Operator and with reasonable diligence, cause the Project to be constructed upon the Premises as may be necessary or desirable to meet the Ritz-Carlton Standards, with construction to commence no later than March 31, 2000. The Hotel shall in all events be completed on or before the Outside Commencement Date;

(b) Furnish to Operator a list of names, addresses, phone numbers and designated contacts for all persons and/or entities retained by Owner as consultants or Contractor(s) in connection with the Project, which list shall be updated in the event of any changes;

(c) Furnish to Operator copies of all initial core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of the foregoing; environmental assessments and impact statements; property descriptions; zoning applications and approvals; ground lease(s); and deed restrictions and other restrictive covenants and conditions affecting the Premises or the improvements thereon, all of which Operator may rely upon in providing technical services pursuant to this Agreement;

(d) Guarantee access by Operator and its employees and consultants to the Project and make all provisions for Operator to enter upon public and private property;

(e) To the extent Owner is responsible for obtaining same, furnish copies of submittals, approvals and building permits from all governmental authorities having jurisdiction over the Project;

(f) Furnish Operator with documentation from all utilities, including, but not limited to, electricity, gas, sewer, water, telephone and cable television, stating that adequate capacity for Project needs is available;

(g) Furnish Operator with a copy of the initial site plan showing reference points and boundary lines along with locations of proposed improvements and amenities;

(h) Furnish Operator with a master plan schedule listing all pre-construction activities and target dates for commencement and completion thereof;

(i) Furnish Operator with narrative descriptions of design goals with respect to each aspect of the Project;

(j) Acknowledge that Operator will, in its review process, provide comments on the plans and specifications. Such reviews do not relieve Owner and its consultants of their responsibility with regard to determining the completeness and coordination of their documents and compliance with the Ritz-Carlton Standards;

(k) Furnish to Operator drawings and other documents as required for Operator to provide the reviews as set forth in Article 2;

(l) Furnish to Operator on Operator's form the "as designed" square footage "take offs" of the space utilization program and required Furniture and Equipment takeoffs; and

(m) Furnish Operator with evidence satisfactory to Operator that no Hazardous Materials are present on the site of the Project or will be incorporated into the construction of the Project, and that any Hazardous Materials previously located on the Project site has been completely removed to the satisfaction and in compliance with the rules, regulations and orders of all governmental authorities having jurisdiction thereof.

4.1.3. Budget. Owner shall prepare and furnish to Operator for its Approval a master budget (the "Master Budget") for the Hotel. Such Master Budget shall be amended and refined at the review sessions identified in Article 2 and again on that date which is

sixty (60) days prior to the construction loan closing. The Master Budget for the Hotel shall specify dollar amounts for the following items (the budgeted amounts for items (e) through (q) shall be furnished to Owner by Operator; the budgeted amounts for all other items shall be furnished to Operator by Owner):

(a) Ground Lease costs;

(b) Predevelopment costs with reasonable specificity;

(c) Design Fees, including special design presentations scheduled by Operator;

(d) Construction Costs in standard CSI format, specifically identifying but not limited to:

(i) Landscaping, hardscaping and site amenities;
(ii) Public space marble;
(iii) Guestroom marble;
(iv) Public space millwork; and
(v) Guestroom millwork;

(e) Furniture and Equipment in Operator's format specifically identifying arts and antiques, kitchen and laundry;

(f) Costs related to interior design;

(g) Interior and exterior signage;

(h) Model guestrooms;

(i) Warehouse staging for Furniture and Equipment;

(j) Art allowances, antique allowances and decorative lighting for guestrooms, guestroom corridors, public areas, restaurant(s), bar(s), ballroom(s), meeting rooms and boardrooms, and private dining room(s);

(k) Administrative offices furnishings;

(l) Equipment and furnishings for main kitchen, remote kitchens, food and beverage outlets, main laundry facility, housekeeping offices, and central and remote shelving;

(m) Equipment for plant maintenance and groundskeeping;

(n) Equipment and supplies for recreational facilities;

(o) Mechanical Installations;

(p) Supplies for guestrooms, public areas, food and beverage facilities, and front desk;

(q) Uniforms;

(r) Other.Development Fees and Costs:

(i) Technical Services Fee;
(ii) Pre-Opening Expenses; and
(iii) Reimbursable Expenses;

(s) Working capital;

(t) Carry; and

(u) Contingency.

4.1.4. Facilities Program. Owner agrees to comply with Operator's Facilities Program currently in effect as of the date of this Agreement. Owner acknowledges that this program may be updated from time to time as the specifics of the Project are defined and will incorporate all reasonable requirements to fulfill the operational needs of the Hotel.

4.2. Construction Period. During the Construction period, Owner shall do the following and pay all costs incident thereto on a timely basis:

4.2.1. Permits. If requested, furnish to Operator copies of all approvals and permits from governmental or quasi-governmental authorities relating to the construction (as opposed to the operation) of the Hotel which have been obtained by Owner, its consultants, Contractor(s) and agents.

4.2.2. Insurance. Furnish to Operator copies of all insurance certificates relating to the construction of the Project and Furniture and Equipment of the Project (naming Operator as an additional insured if requested by Operator). Coverage is to include, without limitation, losses arising out of or related to transit, warehousing, transshipment and installation.

4.2.3. Contract. If requested, furnish to Operator a copy of any construction contract(s).

4.2.4. Bonds. If requested, furnish to Operator copies of all labor, lien, payment or performance bonds posted by Owner or Owner's Contractor(s).

4.2.5. Schedules. If requested, furnish to Operator copies of Contractor(s)' schedules and subsequent revisions thereto.

4.2.6. Drawings. Furnish to Operator a list of all shop drawings and samples to be required from Contractor(s) so that Operator may ascertain which of such drawings and samples must be submitted to Operator for its review and Approval.

4.2.7. Tests. Furnish to Operator copies of all testing and inspection reports describing construction outside acceptable tolerance ranges.

4.2.8. Model Guestrooms. Cause to be constructed, at a place convenient to the construction site, models of two (2) typical guestrooms for Operator's review and Approval. The model rooms shall be constructed off-site and be completed within three (3) months after the start of the Hotel foundations but in all events no later than twelve (12) months prior to the Commencement Date. Upon receipt by Operator of written notice from Owner of completion of the model rooms, Operator shall have twenty-one (21) days within which to Approve such model rooms. Operator's notice of disapproval shall contain Operator's comments relating to required additional or corrective work. Owner shall be permitted to place purchase orders for items which have been Approved by Operator.

4.2.9. Operator Takeover. Incorporate into the Project schedule Operator's takeover schedule and provide the required pre-opening spaces for operations.

4.2.10. FF&E. Advise Operator as to earliest date for commencement of installation of Furniture and Equipment, as to schedules and details of delivery and staging operations with respect to same and as to identity of entities performing the delivery, installation and staging functions. Final plans and specifications for Furniture and Equipment are to be complete no less than twelve (12) months prior to the Commencement Date.

4.2.11. Coordination. Ensure that construction and/or installation does not commence with respect to any phase or aspect of the Project prior to the receipt by Owner of Operator's Approval of all plans, specifications, drawings or other documents pertaining thereto.

4.2.12. Punchlist. Correct the items designated on any punchlist delivered to Owner pursuant to Section 2.2.6 hereof.

4.3. Post-Completion Period. Owner shall furnish to Operator copies of the following and pay all costs incidental thereto:

4.3.1. Completion Certificate. Certificate of Substantial Completion and Certificate of Occupancy and any attachments or stipulations thereto.

4.3.2. Reports. All final testing and balancing reports.

4.3.3. Drawings. All final "as-built" drawings, specifications, equipment manuals and maintenance-related documents, warranties and guaranties.

4.3.4. Life-Safety Certificates. All occupancy permits and certificates, including without limitation, all flame-proofing and other fire-safety-related certificates and all life-safety certificates.

4.3.5. Punchlist. Correct the items designated on any post completion punchlist delivered to Owner pursuant to Section 2.4.2 hereof.

4.4. Signage. Owner, at its sole cost and expense, shall place signage reasonably satisfactory to Operator on the Project site at locations reasonably satisfactory to Operator indicating, inter alia, that the Hotel will be operated by Operator as a Ritz-Carlton hotel, and that the Residences will be managed by Operator (or an Affiliate of Operator). Such signage shall be designed, erected, altered, reconstructed, moved and maintained, in whole or in part, in accordance with plans and specifications Approved by Operator.

4.5. Technical Services Fee. Owner shall pay to Operator a fee for services rendered pursuant to Articles 2, 3 and 4 of this Agreement in the total amount of Four Hundred Thousand Dollars ($400,000) (the "Technical Services Fee") plus Reimbursable Expenses. The Technical Services Fee shall be paid in three (3) equal installments at the following times: (a) one-third (1/3) within two (2) days after the Effective Date of this Agreement; (b) one-third (1/3) on or prior to the first (1st) anniversary of the Effective Date; and (c) one-third (1/3) on or prior to the earlier to occur of (i) the Commencement Date and (ii) the second (2nd) anniversary of the Effective Date. The Technical Services Fee is based upon a Development Period ending on March 31, 2002. In the event such Development Period is extended beyond March 31, 2002, the Technical Services Fee shall be increased pro rata.

4.6 Reimbursable Expenses. In addition to the Technical Services Fee, Owner shall pay to Operator all Reimbursable Expenses. Reimbursable Expenses will be invoiced monthly. Operator will furnish Owner with a budget setting forth its estimate of the Reimbursable Expenses, which budget will be subject to the Master Budget Approved by Owner and Operator in accordance with Section 4.1.3; provided, however, in the event the Development Period extends beyond March 31, 2002, Operator and Owner shall equitably

increase such budgetary limitation on the Reimbursable Expenses to compensate Operator for its additional expenses due to, and during, such extended development schedule.

ARTICLE 5.

PRE-OPENING ACTIVITIES

5.1. Pre-Opening Activities. Owner and Operator recognize that certain activities must be undertaken well in advance of the Commencement Date so that the Hotel can function in an appropriate and orderly manner on the Commencement Date and during the first Fiscal Year. Accordingly, Operator shall:

(a) Recruit, train and employ the staff required for the Hotel;

(b) Negotiate (subject to the provisions of the Operating Agreement) concession contracts and leases for retail and lobby space;

(c) Undertake pre-opening promotion and advertising, including opening celebrations and related activities;

(d) Test and, if necessary, implement modifications of the operations of the Hotel;

(e) For a period commencing not earlier than sixty (60) days before the Commencement Date, make provisions to provide a task force of personnel to supervise and assist the pre-opening and opening operations;

(f) Apply for, and diligently pursue the issuance of, the initial licenses and permits required for the operation of the Hotel as contemplated by the Operating Agreement (*e.g.*, the hotel operating license and the various food service licenses, but not including the certificate of occupancy which shall be Owner's responsibility to obtain);

(g) Negotiate and enter into on behalf of Owner or in Operator's name a pre-opening sales agreement for use in the marketing of the Hotel; and

(h) In general, render such other services incidental to the preparation and organization of the Hotel's operations as may be reasonably required for the Hotel to be adequately staffed and capable of operating on the Commencement Date and during the first Fiscal Year, including development and implementation of marketing and sales programs, accounting and budgeting controls and similar operation items.

5.2. Pre-Opening Budget. Operator shall, upon Owner's request, from time to time after Approval of the Master Budget in accordance with Section 4.1.3, prepare and provide to Owner a supplementary budget (the "Pre-Opening Budget") containing estimates of Pre-Opening Expenses. In the event the Development Period is extended beyond March 31, 2002, and if such extension results in an increase in Pre-Opening Expenses, Operator shall prepare an amended Pre-Opening Budget with such equitable adjustments as are necessary to compensate Operator for its additional expenses due to, and during, such extended development schedule. Within one hundred twenty (120) days after the Commencement Date, Operator shall furnish Owner with an accounting disclosing in reasonable detail the total amount of Pre-Opening Expenses.

5.3. Funding of Pre-Opening Expenses. Owner shall furnish Operator with funds required by Operator for such Pre-Opening Expenses (i) in the amounts and on the dates required, as shown in the projections contained in or furnished by Operator in conjunction with the Pre-Opening Budget, and (ii) in such other amounts and on such other dates as may be specified by Operator in a request for funds, made at least five (5) days in advance of the specified funding date. Such amounts shall be deposited in the Pre-Opening Account.

5.4. Payment of Pre-Opening Expenses; Accounting. All Pre-Opening Expenses shall be paid out of funds in the Pre-Opening Account. Operator shall deliver to Owner, within twenty (20) days after the end of each calendar month, an accounting showing in reasonable detail the Pre-Opening Expenses paid during the calendar month just ended and showing the cumulative amount of all Pre-Opening Expenses paid through the end of such calendar month.

5.5. Final Remittance. After all Pre-Opening Expenses have been paid in full, all remaining amounts in the Pre-Opening Account shall be remitted to Owner by Operator.

ARTICLE 6.

INITIAL BUDGETARY DETERMINATION

6.1. Submission of Initial Annual Operating Projection. Operator will submit to Owner (for Owner's Approval pursuant to Article 4 of the Operating Agreement) at least ninety (90) days prior to Operator's projection of when the Commencement Date will occur the Annual Operating Projection for the first partial Fiscal Year, which shall include Operator's reasonable estimate of the initial Working Capital which will be required and the amounts which will be dedicated to the Reserve for such first partial Fiscal Year.

6.2. Initial Funding of Working Capital. No later than thirty (30) days prior to the Commencement Date, Owner shall pay over to Operator the amount of initial Working Capital for deposit in the Operating Account.

ARTICLE 7.

WARRANTIES AND COVENANTS OF OWNER

7.1. Representations and Warranties of Owner. Owner hereby represents and warrants to Operator as follows:

7.1.1. Title. Owner will maintain throughout the Operating Term good and insurable (pursuant to standard, filed T.E.R.S.A. rates for the State of New York) leasehold title to that portion of the Premises that is attributable to the Hotel Building and ownership of the Hotel Unit subject to: (i) no encumbrances which might materially adversely affect the construction or operation of the Hotel or Operator's rights hereunder or under the Operating Agreement; and (ii) no encumbrances except for those which are either (x) set forth on the Title Policy, or (y) entered into in accordance with and pursuant to the Operating Agreement.

7.1.2. No Breach. The execution, delivery and/or performance by Owner of this Agreement and the Operating Agreement will not result in a breach of any provision contained in any agreement, instrument, document, order, judgment, decree or other material arrangement which Owner is a party or by which it or any of its assets is bound.

7.1.3. Litigation. To the best of Owner's knowledge, there is no pending or threatened suit, action or litigation or administrative, arbitration or other proceeding relating to Owner or the Project which might materially adversely effect the construction or operation of the Hotel or Operator's rights hereunder or under the Operating Agreement.

7.1.4. Access and Utilities. Suitable vehicular and pedestrian access and complete utility services (including water, sewer, storm drainage electricity, gas, telephone and cable television) are available to the Project for its intended purposes or can be made available without extraordinary expense.

7.2. Covenants of Owner. Owner covenants and agrees, in addition to the other covenants of Owner herein and in the Operating Agreement, to:

7.2.1. Construction. Construct, furnish and equip the Project so that same may open for business on or prior to the Outside Commencement Date in full compliance with this Agreement and the Operating Agreement, at Owner's sole expense except as herein

provided, free of liens for labor, services or materials and in full compliance with the requirements of all governmental authorities.

7.2.2. Publicity. To furnish to Operator for its prior Approval all announcements to news media regarding the Project and to permit and assist Operator to obtain such publicity in connection with the Project as Operator desires.

7.2.3. Use of Logos. Prior to the Commencement Date, any use of the "Ritz-Carlton" name or logos in any publication, announcement or article shall be subject to the mutual agreement of Owner and Operator. Owner shall not permit and shall use all reasonable means to prevent its vendors and Contractors from advertising their contracts in connection with the Project and any unauthorized use of the Ritz-Carlton trademarks or logos or the Ritz-Carlton Rights. After the Commencement Date, the use of the "Ritz-Carlton" name or logos shall be governed by the provisions of the Operating Agreement.

7.3. Survival; Indemnity. The provisions of this Agreement shall survive the Commencement Date. Owner shall indemnify and hold Operator harmless from and against any and all loss, cost, damage or expense (including, without limitation, attorney's fees and litigation expenses) arising from, occurring by virtue of or resulting from, any breach of any representation or warranty made by Owner herein or from any failure by Owner to perform or observe any covenant or agreement of Owner contained herein.

7.4. Insurance. Owner shall, at its expense, at all times during the period of construction, furnishing and equipping of the Project, procure and maintain (or cause its general contractor to procure and maintain) adequate property, general liability and automobile liability insurance (with limits and coverage specified below) fully protecting Owner and Operator against loss or damage arising in connection with the preparation, construction, furnishing and equipping of the Project, and in connection with the pre-opening activities described in this Pre-Commencement Agreement. All policies required under this Section 7.4 shall include Operator (and such Affiliates of Operator as Operator shall indicate by notice to Owner) as additional insureds. Owner shall deliver to Operator, upon the commencement of construction of the Project, certificates of insurance with respect to all policies so procured and, in the case of insurance policies about to expire, shall deliver certificates with respect to the renewal thereof. All certificates of insurance provided for under this Section 7.4 shall, to the extent obtainable, state that the insurance shall not be canceled or materially changed without at least sixty (60) days prior written notice to the certificate holder. Insurance premiums and any other costs or expenses with respect to the insurance required under this Section 7.4 shall be paid by Owner from its own funds (and included in the Hotel Development Cost) and not as Gross Operating Expenses under the Operating Agreement. Such insurance shall include:

A. Comprehensive or Commercial General Liability insurance with combined single limits for bodily injury or property damage in an amount not less than One Million

Dollars ($1,000,000) each occurrence. Such insurance shall include the following coverages or endorsements:

(i) Premises & Operations Liability
(ii) Independent Contractors Liability
(iii) Products and Completed Operations Liability to be maintained for two years after the Commencement Date
(iv) Additional Insureds - Employees
(v) Broad Form Property Damage Liability, including Completed Operations
(vi) Blanket X, C and U Coverage
(vii) Severability of Interests provision

If the above coverages are provided under a Commercial General Liability policy form, the General Aggregate limit shall be not less than Two Million Dollars ($2,000,000), and it shall apply, in total, to this project only.

B. Business Auto Liability including owned, non-owned and hired vehicles with combined single limits of bodily injury and property damage in an amount not less than One Million Dollars ($1,000,000) each occurrence.

C. Business interruption insurance for losses caused by an insured delayed opening, naming Operator as an additional insured to the extent of its interest, in such amount to compensate Operator for a period of not less than twelve (12) months.

D. Umbrella Excess liability on a following form in an amount not less than One Hundred Million Dollars ($100,000,000) in excess of the insurance required under Subsections A and B above.

ARTICLE 8.

MISCELLANEOUS

8.1. Late Charge. If Owner fails to make any payment due Operator (for services or Reimbursable Expenses or Pre-Opening Expenses incurred) within sixty (60) days after receipt by Owner of Operator's bill therefor, the amounts due Operator shall include a charge at the rate of one percent (1%) per month of such amount due from and after said sixtieth (60th) day. In addition, Operator may, after giving seven (7) days' written notice to Owner, suspend services under this Agreement until Operator has been paid in full all amounts due it by Owner for services and expenses.

8.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Owner and Operator and their respective heirs, legal representatives, successors and permitted assigns. Neither Owner nor Operator shall assign or transfer any rights hereunder or interest herein (including, without limitation, monies due or that may become due hereunder) without the written consent of the other except in connection with a permitted transfer under the Operating Agreement. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility hereunder. Nothing contained in this Section 8.2 shall prevent Operator from employing such independent consultants, associates and subcontractors as Operator may deem appropriate to assist it in the performance of its services hereunder.

8.3. Third-Party Rights. Nothing herein shall be construed to give any rights or benefits hereunder to any person or entity, other than Owner or Operator, and the rights of third-party beneficiaries are hereby expressly negated.

8.4. Headings. The headings of Sections and Paragraphs herein are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provision hereof.

8.5. Counterparts. This Agreement may be executed in one or more counterparts having the signatures of the parties and each such counterpart shall, for all purposes, be deemed an original, but all such counterparts shall constitute but one and the same instrument.

8.6. Communications. Within ten (10) days following execution of this Agreement, Owner and Operator shall each designate to the other in writing the employee or other representative of, respectively, Owner and Operator who shall be responsible for receiving, originating and channeling all communications to and from such party with regard to the other party.

8.7. Effect of Approval of Plans and Specifications. Owner and Operator agree that in each instance in this Agreement or elsewhere wherein Operator is required to give its Approval of plans, specifications, budgets and/or financing, no such Approval shall imply or be deemed to constitute an opinion of Operator, nor impose upon Operator any responsibility for the design or construction of the Hotel, including but not limited to structural integrity or life-safety requirements or adequacy of budgets and/or financing.

8.8. Termination of Operating Agreement. If, for any reason, the Operating Agreement is terminated, then this Agreement shall also be terminated, as of the same date, provided that any obligations accruing prior to such termination shall survive such termination (including payment of the Technical Services Fee and Reimbursable Expenses incurred prior to the date of termination).

8.9. Events of Default.

8.9.1. Events of Default. The following shall constitute Events of Default:

(a) The failure of either party to pay any sum of money to the other party when due and payable, if such failure is not cured within ten (10) days after written notice specifying such failure is received by the defaulting party from the non-defaulting party.

(b) The failure of either party to perform, keep or fulfill any of the other covenants, undertakings or obligations set forth in this Agreement or in the Operating Agreement or the Condominium License Agreement, if (i) such failure has or could have a material adverse affect on the rights and duties of either party hereto, and (ii) such failure is not cured within thirty (30) days after written notice specifying such failure is received by the defaulting party from the non-defaulting party (however, if such failure is incapable of cure within such period, and the defaulting party commences to cure such default during such period and thereafter prosecutes such cure to completion with all due diligence, then no Event of Default shall exist unless such failure remains uncured after one hundred eighty (180) days after receipt of such notice).

(c) The breaching in any material respect of any warranty or representation made herein or in any document executed in connection herewith.

(d) The filing by Owner or Operator of a voluntary petition in bankruptcy or insolvency under any applicable law; the filing by Owner or Operator of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any applicable law or regulation relating to bankruptcy, insolvency or other relief for debtors; Owner seeking, consenting to or acquiescing in the appointment of any custodian, trustee, receiver, conservator or liquidator of Owner of all or any substantial part of the Hotel or of any or all of the rents, issues, profits, revenues or royalties thereof; the making by Owner or Operator of any general assignment for the benefit of creditors; Owner's or Operator's failure generally to pay its debts as such debts become due; Owner or Operator giving notice to any governmental body of insolvency, pending insolvency or suspension of operations; the entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against Owner or Operator seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any applicable law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or the appointment of any custodian, trustee, receiver, conservator or liquidator of Owner or of all or any substantial part of the Hotel or of any of the rents, issues, profits, revenues

or royalties thereof without the consent or acquiescence of Owner, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

8.9.2. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party may pursue any and all remedies available to it at law or in equity, including termination of this Agreement. In addition, in the event of a failure by a party to perform, keep or fulfill any covenant, undertaking or obligation which would have been an Event of Default but for the lack of materiality of such default, the non-defaulting party shall have all remedies available at law or in equity except the termination of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Owner and Operator have executed this Agreement under seal as of the date first above written.

OPERATOR:

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,
a Delaware limited liability company

By: _____
Name: Kevin M. Kimball
Title: Vice President

OWNER:

MILLENNIUM BPC DEVELOPMENT LLC,
a New York limited liability company
By: Millennium Partners LLC, its sole member
By: Millennium Partners Management LLC
By: Millennium Manager I, Inc.

By: _____
Name: Brian Collins
Title: Vice President

CONDOMINIUM SUBMANAGEMENT AGREEMENT

between

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.
("RC")

and

MILLENNIUM PARTNERS BPC MANAGEMENT LLC
("Condominium Manager")

covering

The Residences at the Ritz-Carlton, Downtown New York
Battery Park City #1
New York, New York

Dated: August 31, 1999

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CONDOMINIUM SUBMANAGEMENT AGREEMENT

THIS CONDOMINIUM SUBMANAGEMENT AGREEMENT, made this 31st day of August, 1999, between **THE RITZ-CARLTON HOTEL COMPANY, L.L.C.**, a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 3414 Peachtree Road, NE, Suite 300, Atlanta, Georgia 30326 (together with its permitted successors and assigns, "RC"); and **MILLENNIUM PARTNERS BPC MANAGEMENT LLC**, a Delaware limited liability company with its principal place of business at 1995 Broadway, Third Floor, New York, New York 10023 (together with its permitted successors and assigns, the "Condominium Manager").

RECITALS

A. Millennium BPC Development LLC ("Developer") intends to construct a mixed-use condominium building (the "Building") at Battery Park City Site #1, New York, New York. The Building is intended to be submitted to a condominium regime (the "Condominium") pursuant to the Condominium Act, by the filing of the condominium declaration and floor plans (the "Condominium Documents") in accordance with the Condominium Act. The Condominium is proposed to contain: (i) approximately 150 residential units (collectively, the "Residential Units", and together with the Common Elements pertaining thereto, the "Residential Section"); (ii) a Ritz-Carlton Hotel (the "Hotel Unit") containing approximately 316 keys; and (iii) retail space (the "Retail Unit").

B. Condominium Manager is to be employed by the Condominium Board to manage the Condominium, pursuant to a certain Condominium Management Agreement to be entered into between Condominium Manager and Condominium Board (the "Condominium Management Agreement").

C. Condominium Manager desires to engage RC to sub-manage certain aspects of the Condominium on behalf of Condominium Manager.

D. Pursuant to that certain Operating Agreement entered into by Developer (as "Owner") and RC (as "Operator"), dated as of the date hereof (the "Operating Agreement"), Developer has engaged RC to operate the hotel to be located in the Hotel Unit, under the name and mark "The Ritz-Carlton, Downtown New York" (the "Hotel").

E. Any capitalized term not defined in these Recitals or otherwise defined in this Agreement shall have the meaning given to such term in Section 13 of this Agreement.

In consideration of the terms, conditions, and covenants hereinafter set forth, the parties hereto mutually agree as follows:

1. APPOINTMENT; ACCEPTANCE OF APPOINTMENT.

1.1 Appointment as Sub-Manager. Condominium Manager hereby employs RC to perform certain of the Management Services and Hotel Concierge Services in accordance with the provisions of this Agreement; RC hereby agrees to perform the Management Services and Hotel Concierge Services in accordance with the provisions of this Agreement. Subject to this Agreement, the Condominium Management Agreement and the Budget, Condominium Manager hereby delegates to RC such power and authority as is provided to Condominium Manager under the Condominium Management Agreement as is reasonably necessary for RC to perform the Management Services and Hotel Concierge Services. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement. Everything done by RC pursuant to this Agreement shall be done as agent of Condominium Manager; all obligations or expenses incurred by RC pursuant to this Agreement shall be, as agent for Condominium Manager, for the account of, on behalf of and at the expense of, the Condominium, except as otherwise specifically set forth in this Agreement.

1.2 Cooperation with Condominium Manager. The Condominium Manager and RC agree to cooperate with each other in carrying out their respective duties under this Agreement.

2. MANAGEMENT SERVICES. The duties and responsibilities of RC shall be to perform the Management Services and the Hotel Concierge Services in a manner consistent with the provisions of the Condominium Documents and subject to the Budget and the terms and conditions set forth in this Agreement and the Condominium Management Agreement. RC is hereby authorized to perform each of the services set forth in this Section 2, subject in each case to the conditions therein specified. As consideration for the performance of the Management Services, RC shall be entitled to receive from Condominium Manager (a) the Management Fee as provided in Section 4.1 below, and (b) timely reimbursement for the actual amount of all costs and expenses incurred by RC in delivering and performing the Management Services as provided in Section 4.2 below. The expenditure of all costs and expenses for Management Services by RC shall be made consistent with the Budget as approved from time to time by the Condominium Board in accordance with the Condominium Documents, the Condominium Management Agreement and this Agreement. Notwithstanding the foregoing, RC may not claim reimbursement for, nor shall RC be entitled to reimbursement for, bookkeeping and accounting services for the Residential Section performed as part of Management Services by RC's employees. RC may hire and employ vendors and outside contractors to perform services related to any audit of the finances of the Condominium and the filing of tax returns and related documents with appropriate governmental authorities, the cost thereof being a reimbursable cost to RC (subject to the Budget, as provided above).

2.1 Management Services. RC shall provide the following management services (the "Management Services"):

2.1.1 Condominium Management Services. At the request of Condominium Manager, RC shall provide, with respect to the entire Condominium, those services that Condominium Manager is obligated to provide under the Condominium Management Agreement which are customary for RC to provide in connection with the management of a hotel. Examples

of such services. include ordinary scheduled building repair and maintenance, snow removal, security, HVAC maintenance and repair, and exterior building cleaning. Prior to the Commencement Date, RC and Condominium Manager shall agree on the definitive list of these services.

2.1.2 Residential Management Services. At the request of Condominium Manager, RC shall provide, with respect to the Residential Section, any and all services that Condominium Manager is obligated to provide under the Condominium Management Agreement with respect to the Residential Section only, including, but not limited to, the services of a doorman, a lobby receptionist/concierge and package and mail receiving and delivery. Prior to the Commencement Date, RC and Condominium Manager shall agree on the definitive list of these services.

2.1.3 Optional Management Services. At the request of Condominium Manager, RC may elect, at its option, to provide other services that Condominium Manager is obligated to provide under the Condominium Management Agreement that are not described in Section 2.1.1 or 2.1.2.

2.1.4 Budgets. In accordance with the Condominium Documents and the Condominium Act, and as requested by Condominium Manager, RC shall prepare in consultation with Condominium Manager, and provide to Condominium Manager to submit to the Condominium Board for approval, an annual budget for the Condominium satisfying the requirements of the Condominium Documents and this Agreement, including expenses and any required Reserve Account. Any budget which has been approved by the Condominium Board is hereinafter referred to as the "Budget." RC shall use reasonable efforts to advise Condominium Manager and the Condominium Board of any deficiencies in any proposed or revised operating or capital budget which, in RC's reasonable estimation, would prevent the Common Elements of the Residential Section from being maintained in accordance with Ritz-Carlton Standards.

2.2 Employment of Consultants. In the performance of the Management Services, and subject to the Approval of Condominium Manager and consistent with the Budget, RC may retain and employ such attorneys, accountants and other professionals and experts whose services may be reasonably required to effectively perform the Management Services, and employ same on such basis as it deems most appropriate for such performance.

2.3 Compliance with Laws. In the performance of the Management Services, RC shall use reasonable efforts to operate the Condominium and the affairs of the Condominium Board in compliance with (a) all applicable governmental laws, regulations, ordinances, orders, and requirements, and (b) the terms and conditions of the Condominium Documents and in accordance with the requirements of any insurance carrier insuring all or any part of the Common Elements. RC shall not be responsible, however, for the compliance of the Condominium or the Common Elements (or any equipment therein or related thereto) with the requirements of any building codes or with any statutes, ordinances, laws, rules, or regulations (including those relating to the existence and disposal of solid, liquid, and gaseous wastes, and toxic substance or Hazardous Materials) of governments or agencies, or any public authority or official thereof having jurisdiction over the Condominium or

the Common Elements (except for non-compliance caused by the gross negligence or willful misconduct of RC) ("Code Requirements"). Condominium Manager specifically agrees to hold harmless RC with regard to the Condominium or the Common Elements (or any equipment therein or related thereto) not being in compliance with the Code Requirements unless a compliance action arises due to the gross negligence or willful misconduct of RC. RC, however, shall notify Condominium Manager and the Condominium Board promptly (and forward to them copies) of any complaints, warnings, notices, or summonses received by RC relating to any of the above matters affecting the Condominium. RC is authorized to disclose the ownership of the Condominium to any such officials. The cost of compliance with laws, ordinances, rules and regulations incurred by RC shall be a reimbursable expense to RC.

2.4 Service Contracts. In the performance of the Management Services, and consistent with the Budget, RC shall engage such third parties as RC deems advisable to provide such services as may be necessary or desirable for management of the affairs of the Condominium Board, or the repair, maintenance and operation of the Condominium, including the Common Elements, in accordance with the terms of the Condominium Documents, the Condominium Management Agreement and this Agreement, provided that if the term of a proposed contract for services is for a period longer than one (1) year, or involves the expenditures of Fifty Thousand and 00/100ths Dollars ($50,000.00) or more in a year (as such amount is adjusted over the Term by the CPI), then the prior approval of Condominium Manager shall be required notwithstanding the fact that there is a line item in the Budget. RC shall administer any such contracts. RC shall not be precluded from executing agreements or granting concessions or licenses to itself, or to any Affiliate, provided the approval of Condominium Manager has been obtained. Entering into any contract, concession or license by RC with itself or an Affiliate, as provided herein, shall not be considered to be self-dealing, provided, however, that RC shall comply with any bidding requirements set forth in the Condominium Documents or the Condominium Act.

2.5 Personnel. In the performance of the Management Services, RC shall provide personnel selected, appointed and supervised by RC and deemed reasonably necessary to permit RC to perform the Management Services. All such personnel shall be employees of RC. Subject to the immediately following sentence, RC shall have sole discretion to hire, terminate, promote, supervise, direct and train all such personnel, to fix their compensation, and, generally, to establish and maintain all employment policies and practices, provided that RC's employment policies and practices shall comply with all applicable laws, regulations and orders of any applicable government authority. RC agrees to consult with Condominium Manager from time to time regarding personnel performing the Management Services hereunder, and as reasonably requested by Condominium Manager, transfer on-site personnel from one job to another. The cost and expense of all such personnel, other than personnel related to supplying bookkeeping and accounting services, shall be a reimbursable expense to RC and shall be consistent with the Budget.

2.6 Fidelity Bond. RC and all officers, employees and agents of RC who handle or are responsible for handling the Condominium Board's monies under this Agreement shall be covered under a blanket fidelity bond in accordance with the requirements of Section 11.3B(2) hereof in favor of RC, Condominium Manager, the Condominium Board and the Condominium in

such amount as may be required by the Condominium Documents. The cost and expense of such bond(s) shall be included in the Budget as a reimbursable expense to RC.

2.7 Performance of Management Services by Hotel Employees. Provided RC is also the Operator of the Hotel, and the Hotel Unit Owner permits, RC shall use its reasonable efforts to coordinate the manner of delivery of the Management Services to utilize Hotel employees, and thus avoid unnecessary duplication of costs and expenses. If RC shall determine that its obligations under this Agreement can be discharged by personnel already serving under RC's direction as employees of the Hotel, RC may employ such personnel to perform the Management Services, and allocate an equitable portion of the costs and expenses thereof to some or all of the Unit Owners based, to the extent practicable, on the actual usage of such personnel for the benefit of such Unit Owners, or, if not practicable, on estimated usage. Any such allocation shall be subject to the Approval of Condominium Manager during the Budget approval process. If RC and Condominium Manager cannot agree on the allocation with respect to any particular Hotel employee or class of Hotel employees, such Hotel employee(s) shall not be used in the performance of Management Services.

2.8 Employees of the Condominium. If and when the Condominium Board desires to directly employ one or more persons to provide services to the Condominium, the Condominium Board shall discuss the same with Condominium Manager and RC with respect to such employees' compatibility with RC's employees and the provision of Management Services hereunder.

2.9 Intentionally Deleted.

2.10 Repair and Maintenance of the Common Elements of the Residential Section to Ritz-Carlton Standards. To the extent delegated in Section 2.1 and consistent with the Budget, RC shall cause the Common Elements of the Residential Section to be maintained, repaired, and replaced in accordance with the requirements of this Agreement, the Condominium Management Agreement, the Condominium Documents, and the Ritz-Carlton Standards.

2.11 Intentionally Deleted.

2.12 Intentionally Deleted.

2.13 Ritz-Carlton Rights.

2.13.1 Ownership of the Ritz-Carlton Rights. Condominium Manager acknowledges that RC and its Affiliates are the sole and exclusive owners of all rights, title and interest of every kind and nature in and to the Ritz-Carlton Rights and all the goodwill associated with the Ritz-Carlton Rights. Condominium Manager further acknowledges that, except as may be expressly provided in this Agreement, neither the Condominium Board, Condominium Manager nor any Unit Owner shall have any rights or interest whatsoever in any of the Ritz-Carlton Rights, including the Ritz-Carlton Marks.

2.13.2 Rights to Use Ritz-Carlton Marks. During the Term, the Residential Section shall at all times be known and designated as "The Residences at The Ritz-Carlton, Downtown New York," or by such other name as may be approved by Condominium Manager and RC (the "Approved Name"). Condominium Manager covenants to RC that the legal name of the Condominium (i.e., the name used in the Condominium Documents) shall not include the words "Ritz-Carlton," or any of the Ritz-Carlton Marks, or any reference that would create confusion with or interfere with Ritz-Carlton Rights. During the Term, in the event that the name of the Hotel is changed, a conforming change shall be made in the Approved Name. Any use of the Approved Name shall be limited to (i) signage on or about the Residential Section, which may also include the Ritz-Carlton Marks, in form and style approved by RC, and (ii) use of the Approved Name by the Condominium, the Condominium Board and Residential Unit Owners to identify the address of the Residential Section or the Residential Units. No use of the Approved Name or any of the Ritz-Carlton Marks shall be permitted if RC shall cease to manage the Condominium or should this Agreement terminate, except as provided in Section 5.3.1. Any use of the Approved Name by the Condominium, the Condominium Board, Condominium Manager, any Residential Unit Owner, or anyone else or the Ritz-Carlton Marks on signage, which in the sole discretion of RC is likely to cause confusion or to dilute or disparage the Ritz-Carlton Marks or the Ritz-Carlton Rights, or harm in any manner the image or reputation of RC or of any Affiliate, is strictly prohibited. RC and Condominium Manager expressly agree that, except as to the use rights afforded by this Section 2.13.2, neither the Condominium, the Condominium Board, Condominium Manager nor any Unit Owner shall have any right, title or interest in or to the name or mark RITZ-CARLTON, nor rights or interests in any other name or mark owned by RC or any Affiliate, including but not limited to the Lion & Crown Design.

2.13.3 Removal of Ritz-Carlton Marks. Subject to Section 5.3.1, within fifteen (15) days after any expiration or termination of the Term, Condominium Manager shall require the Condominium and/or the Condominium Board as applicable to remove from the Condominium, including the Residential Section, any signs or other indicia of any connection with the Ritz-Carlton Rights or the Ritz-Carlton Marks at the Condominium's cost. RC shall have the right to seek injunctive or other relief in a court of competent jurisdiction to enforce the foregoing provisions, and if such enforcement shall be necessary, the Condominium shall bear all of RC's costs, including reasonable attorneys' fees, of such enforcement. If the Condominium and/or the Condominium Board as applicable fails to complete such action within such fifteen (15) day period, RC shall have the right to take such action as it may consider necessary to remove from the Condominium any signs or other indicia of any connection with the Ritz-Carlton Rights at the cost of the Condominium. Condominium Manager shall, as part of the Condominium Management Agreement, require the Condominium Board to consent to the foregoing rights of removal and to RC's rights to enforce such removal, and shall name RC as a third party beneficiary thereof.

2.13.4 Survival. The provisions of this Section 2.13 and the enforceability thereof shall survive the expiration of this Agreement.

2.14 Office and Ancillary Spaces. If requested by RC, Condominium Manager shall provide (a) reasonable amount of space within the Condominium to be used as an office for the Building superintendent and (b) a reasonable amount of space on each floor of the Residential

Section of the Condominium to facilitate delivery of Hotel Concierge Services as hereinafter described, so long as such space is determined at the design review phase. If RC requests such space at a later date, Condominium Manager will make reasonable efforts to provide such space. The office space and the other ancillary spaces will be provided at no cost to RC.

3. **HOTEL CONCIERGE SERVICES.** So long as RC is the Operator of the Hotel and the Hotel Unit Owner continues to permit RC, as Operator, to provide such services, RC shall provide the following Hotel Concierge Services to the Residential Unit Owners:

3.1 Base Hotel Concierge Services. For purposes of this Agreement, "Base Hotel Concierge Services" means hotel type concierge services, voice mail, central PBX, fax/message delivery, and direct billing privileges in the Hotel. RC shall provide each Base Hotel Concierge Service to the Residential Section at no cost to the Condominium or to any Residential Unit Owner if the nature of the Base Hotel Concierge Service to be provided is a service shared by the Hotel and the Residential Section. If any service described as a Base Hotel Concierge Service is one that cannot be shared with, or is not shared with, the Hotel, then the cost of that service, if provided, shall be included in the Budget as a reimbursable cost hereunder. The cost of voice mail equipment and PBX equipment, as initially installed in the Residential Section, including installation in the Residential Units, has been provided at no cost to the Condominium or to any Residential Unit Owner. The cost of maintaining voice mail and central PBX equipment serving the Residential Section and any Residential Unit, however, shall be the responsibility of the Condominium. Furthermore in the event that the Hotel Unit Owner elects to upgrade either the voice mail, the central PBX equipment in the Hotel or both, the Condominium Board may elect at the same time to make the same upgrades in voice mail and central PBX equipment serving the Residential Section at the sole cost and expense of the Condominium. If the Condominium Board elects not to make the same upgrades in this equipment, then RC shall have no further obligation to provide voice mail, PBX services or both, as applicable, to the Residential Section as part of Base Hotel Concierge Services. In the case where the Condominium Board has elected not to make upgrades in equipment permitting delivery of Base Hotel Concierge Services and as a result thereof some Base Hotel Concierge Services are terminated, the Condominium Board shall be solely responsible for supplying at its sole cost and expense any substitute services desired by the Condominium Board or the Residential Unit Owners, including any related equipment.

3.2 Listed Hotel Concierge Services. RC agrees to make available to each Residential Unit Owner certain hotel services such as 24-hour room service, catering, central commissary for groceries, laundry, dry cleaning, babysitting, florist, airport transportation and secretarial services for which a price list is established by RC (collectively, "Listed Hotel Concierge Services"). Each Residential Unit Owner will pay the Hotel Unit Owner (or its agent) directly for the cost of any Listed Hotel Concierge Services used by such Residential Unit Owner.

3.3 Additional Hotel Concierge Services. RC agrees to make available to each Residential Unit Owner certain additional hotel services for which no price list is established, such as housekeeping services, 24-hour maintenance and repair and a seamstress for alterations (collectively "Additional Hotel Concierge Services"). Each Residential Unit Owner will pay the

Hotel Unit Owner (or its agent) directly for all costs and expenses associated with providing and billing for the Additional Hotel Concierge Services to that Residential Unit Owner.

3.4 Provision of Services/Revision of Services/Termination of Services. Notwithstanding anything to the contrary contained herein, RC shall make available to each Residential Unit Owner the same Listed Hotel Concierge Services and Additional Hotel Concierge Services (to the extent practicable) as are made available from time to time to guests of the Hotel. RC shall have the right to revise from time to time the Listed Hotel Concierge Services and Additional Hotel Concierge Services. Additionally, RC shall have the right to terminate Listed Hotel Concierge Services and Additional Hotel Concierge Services to any Residential Unit Owner that fails to pay the Hotel Unit Owner (or its agent) on a timely basis.

3.5 Residential Unit Owners' Responsibility. A Residential Unit Owner shall be directly liable to RC, acting on behalf of Hotel Unit Owner, for payment of all charges for Listed Hotel Concierge Services and Additional Hotel Concierge Services provided to that Residential Unit Owner, or such Residential Unit Owner's guests and/or tenants. Nothing in this Agreement, the Condominium Management Agreement or the Condominium Documents shall prevent, or shall be used by the Condominium or the Condominium Board to prevent, RC or the Hotel Unit Owner from seeking recovery of such charges from any delinquent Residential Unit Owner. RC shall have no obligation to provide any Additional Hotel Concierge Services or Listed Hotel Concierge Services to any Residential Unit Owner that has failed to pay accrued charges for such services or otherwise abuses the use of those services.

3.6 Commencement/Cessation of Hotel Concierge Services. In no event shall RC be required to provide any of the Hotel Concierge Services referred to in this Section 3 prior to the opening of the Hotel. Furthermore, notwithstanding a termination of this Agreement during the first five (5) years following the opening of the Hotel, and provided that RC continues to manage the Hotel, RC shall be obligated to continue to provide the Hotel Concierge Services referred to in this Section 3 during the remaining portion of such five (5) year period following the date of termination; provided that if any successor party serving as manager or sub-manager of the Condominium, or the Condominium and/or the Condominium Board, as applicable, denies RC access to the Residential Section, then RC shall have no obligation or duty to provide the Hotel Concierge Services described in this Section 3 to the Residential Unit Owners.

4. FEES; ADVANCES; RESERVE ACCOUNTS.

4.1 Management Fee. In consideration of RC providing the Management Services and the Base Hotel Concierge Services, RC shall be entitled to receive a management fee in the amount of One Hundred Twelve Thousand Five Hundred and 00/100ths Dollars ($112,500.00) per annum (the "Management Fee"), payable in advance in equal monthly installments, initially in the amount of Nine Thousand Three Hundred Seventy Five and 00/100ths Dollars ($9,375.00) per installment; provided that if the total number of Residential Units exceeds one hundred fifty (150), then such annual Management Fee shall be increased by seven hundred fifty dollars ($750) times the number of Residential Units in excess of one hundred fifty (150) (the "Fee Increase") and the monthly installments described above shall be increased by the Fee Increase divided by twelve (12).

Provided that the Commencement Date under this Agreement shall have occurred, the first installment of the Management Fee shall be due on the Commencement Date. If the Commencement Date is other than the first day of a calendar month, then the amount of this first payment shall be prorated to reflect payment for less than a full calendar month. The amount of the Management Fee shall be adjusted and increased annually by the increase in the CPI over the preceding twelve (12) calendar months, such adjustment to occur annually on the anniversary of the Commencement Date. RC and Condominium Manager hereby acknowledge that the Management Fee is being paid to RC as consideration for RC providing the Management Services and the Base Hotel Concierge Services as more fully provided in Sections 2.1 and 3.1, respectively. RC and Condominium Manager agree that the amount of the Management Fee shall not be adjusted for any modifications or changes in the Base Hotel Concierge Services as provided in Section 3.1; nor shall the Management Fee be affected in any way by the provision (or failure to provide) of any Listed Hotel Concierge Services and/or Additional Hotel Concierge Services.

4.2 Advances and Reimbursements. All costs and expenses incurred by RC in providing the Management Services (other than those non-reimbursable expenses specified in Section 2 of this Agreement) shall be reimbursed to RC by no later than the tenth (10th) day of the month following the month in which such costs and expenses were incurred, provided the same are consistent with the Budget, and provided further that RC may not claim reimbursement for bookkeeping and accounting work and services for the Residential Section performed as part of Management Services by RC's employees. Such reimbursement shall be made by Condominium Manager to RC, or, if RC is maintaining the Condominium's accounts, RC may reimburse itself for such costs and expenses from the Condominium's funds maintained in its operating account to the extent consistent with the Budget. RC shall not be required to perform any act or duty under this Agreement involving an expenditure of money unless there shall be sufficient funds therefor in the bank accounts of the Condominium. If at any time RC is not paid or reimbursed for costs and expenses as provided above, such failure shall be an Event of Default/Condominium Manager and entitle RC to terminate this Agreement upon thirty (30) days notice, provided such payment is not made prior to the expiration of such thirty (30) day period. Nothing in this Agreement shall require RC to expend any of its own funds (including its remuneration and expenses payable hereunder) for any matter herein or otherwise in respect to Condominium Manager or the Condominium Board related to the operation of the Condominium.

4.3 Reserve Account. If pursuant to the Condominium Documents, the Condominium and/or the Condominium Board, as applicable, requires the establishment of one or more monetary reserve accounts (a "Reserve Account") for repairs, replacements and purchases for the Common Elements and other obligations (if any) in accordance with the Condominium Documents ("Reserve Account Obligations"), then at the request of Condominium Manager, RC shall establish in the Condominium's name one or more Reserve Accounts, each as a separate interest-bearing bank account in a bank designated by the Condominium Board and Approved by Condominium Manager and RC. If Approved by the Condominium Board and the Condominium Manager, the Reserve Account shall be available for use by RC to cover the cost of Reserve Account Obligations consistent with the Budget. If RC is collecting Condominium assessments then, upon receipt of assessments, RC shall promptly deposit into the Reserve Account the amount, if any, required under the Budget to be set aside in the Reserve Account.

5. TERM

5.1 General. This Agreement shall commence on the Commencement Date and, unless a shorter period of time is mandated by the applicable provisions of the Condominium Act or the requirements of those governmental authorities having jurisdiction over the operation or maintenance of the Condominium (provided that Condominium Manager shall undertake good faith efforts with respect to the Condomimium Act and such governmental authorities to maximize the Term), and unless sooner terminated in accordance with the provisions of this Agreement, shall continue thereafter through December 31 of the year that is twenty-five (25) years after the Commencement Date (the "Term"). Upon the expiration of the initial Term, this Agreement shall be extended for up to two (2) additional ten (10) year periods, unless not less than two hundred forty (240) days before the expiration of the initial Term or any previously extended Term, as the case may be, RC has given written notice to the Condominium Manager of RC's election not to extend. Any such extension shall be automatically effective without any amendment hereto, but the parties hereto shall execute and deliver any supplements to this Agreement that either party shall reasonably request to evidence any such extension. RC agrees that, subject to there being no Event of Default/Condominium Manager that remains uncured beyond any grace and cure periods and the operational limitations in Section 5.2.2 continuing to be satisfied, if RC elects to extend the term of the Operating Agreement as provided therein, it shall also elect to extend the term of this Agreement, such that the two agreements will be co-terminus.

5.2 Termination by RC. This Agreement may be terminated before the expiration of the Term on the occurrence of one or more of the following events:

5.2.1 Event of Default. Each of the following events shall be deemed an event of default by the Condominium Manager under this Agreement (an "Event of Default/Condominium Manager"): (a) the Condominium Manager fails to pay or cause to be paid to RC the Management Fee, when the same is due and owing to RC, or fails to reimburse or cause to be reimbursed to RC any expenses and costs incurred by RC in providing and performing the Management Services and does not cure any such breach or failure, within ten (10) days after receipt from RC of written notice of such default or breach; or (b) the Condominium Manager commits a material breach of or material failure to perform any other term, covenant, or condition required to be performed by it as specified in this Agreement, and does not cure or diligently pursue reasonable efforts to cure, any such breach or failure, within thirty (30) days after receipt from RC of written notice of such default or breach; or (c) Condominium Manager breaches a material representation or warranty contained in this Agreement. Upon the occurrence of one or more of the Events of Default/Condominium Manager, RC may terminate this Agreement by giving written notice to Condominium Manager, provided that the date of termination may be effective no earlier than thirty (30) days after the date that such notice is given to Condominium Manager.

5.2.2 Operational Limitations. At RC's option, at any time after the fifth (5th) anniversary of the Commencement Date, RC may terminate this Agreement, (i) if through no fault or default of RC, RC has been unable to maintain the Common Elements associated with the Residential Section in accordance with the Physical Standards component of the Ritz-Carlton Standards or (ii) if the Budget does not provide sufficient funds to allow RC to provide Management

Services (where applicable) in accordance with the Operating Standards component of the Ritz-Carlton Standards, and Condominium Manager is unable to cure or correct such condition to the reasonable satisfaction of RC within one hundred twenty (120) days after receipt of written notice from RC of such limitations or conditions. If such condition is not timely cured or corrected, then RC may exercise this option to terminate this Agreement by giving written notice to the Condominium Manager, provided that the date of termination may be effective no earlier than sixty (60) days after the date that such notice of termination is given to the Condominium Manager.

5.2.3 Condominium Manager Ceases to Operate the Condominium. In the event that the Condominium Management Agreement is terminated or the Condominium Manager no longer manages the Condominium for any reason (other than reasons related to a Mortgagee exercising remedies against Developer or Condominium Manager), this Agreement shall automatically terminate, such termination to be effective as of the date that Condominium Manager no longer manages the Condominium.

5.2.4 RC Ceases to Operate the Hotel. In the event that RC no longer operates the Hotel for any reason, then, except as provided in Section 5.3.1, RC may, at RC's option, terminate this Agreement, such termination to be effective as of the date of delivery of a written notice of termination given by RC to Condominium Manager or such other date specified in the notice.

5.2.5 Condemnation of the Condominium. In the event that a condemnation or eminent domain action occurs affecting any or all of the Residential Section or any other portion of the Building or the Condominium that may affect RC's obligations pursuant to this Agreement, and the Condominium Board is not required to rebuild, and elects not to rebuild the Condominium, then, at RC's option, RC may terminate this Agreement, such termination to be effective as of the date of delivery of a written notice of termination given by RC to the Condominium Manager, or such other date specified in the notice.

5.2.6 Casualty Affecting the Condominium. In the event a casualty occurs affecting any or all of the Residential Section or any other portion of the Building or the Condominium that may affect RC's obligations pursuant to this Agreement, and the Condominium Board is not required to repair or restore the Condominium, or elects not to do so, then, at RC's option, RC may terminate this Agreement, such termination to be effective as of the date of delivery of a written notice of termination given by RC to the Condominium Manager, or such other date specified in the notice.

5.3 Termination by Condominium Manager.

5.3.1 Event of Default. Each of the following events shall be deemed an event of default under this Agreement by RC (an "Event of Default/RC"): (a) RC commits a material breach of or material failure to perform any term, covenant, or condition contained in this Agreement, and does not cure or diligently pursue reasonable efforts to cure, any such breach or failure, within thirty (30) days after receipt of written notice of such default or breach from the Condominium Manager, or (b) RC breaches a material representation contained in this Agreement.

Upon the occurrence of one or more of the Events of Default/RC, Condominium Manager, on its own action or at the request of the Condominium Board, may terminate this Agreement by giving RC no less than thirty (30) days' prior written notice of Condominium Manager's election to terminate this Agreement. Notwithstanding the foregoing, if such termination occurs during the first five (5) years of the Term and occurs "for cause" based upon an Event of Default/RC, the basis of which Event of Default/RC is fraud, gross negligence, willful misconduct or a crime of moral turpitude concerning RC in the performance of its duties under this Agreement (and RC has failed to cure such default within the thirty (30) day cure period), RC will allow the Condominium to continue to be identified by and to use the Ritz-Carlton Marks, including the name "Ritz-Carlton", solely for the purposes, and subject to the restrictions contained in, Section 2.13 hereof for the remainder of the five (5) year period that began on the Commencement Date; and upon the expiration of the five (5) year period, the Ritz-Carlton Marks shall be immediately removed from the Residential Section of the Building in accordance with Section 2.13.3. Subject to the other terms and conditions hereof, in the event that Condominium Manager ceases to be the manager of the Condominium in connection with the exercise of remedies under the Mortgage, RC shall continue to perform hereunder for the benefit of, and shall attorn to, Mortgagee, any purchaser of the Developer's interest in the Building at foreclosure or pursuant to a deed-in-lieu of foreclosure (a "Foreclosure Successor"), or any condominium manager retained by any Foreclosure Successor, provided, such Foreclosure Successor or condominium manager assumes Condominium Manager's obligations hereunder. RC shall execute such instruments in confirmation of the foregoing as any Foreclosure Successor shall reasonably request.

5.3.2 Termination Pursuant to the Condominium Act. This Agreement and the Term hereof shall be canceled at such times and under such circumstances as provided in Section 339-t of the Condominium Act.

5.3.3 RC Ceases to Operate the Hotel. In the event that RC no longer operates the Hotel for any reason, Condominium Manager may, at its option, terminate this Agreement, such termination to be effective as of the date of delivery of a written notice of termination given by Condominium Manager to RC or such other date specified in the notice.

5.3.4 Condemnation of the Condominium. In the event that a condemnation or eminent domain action occurs affecting any or all of the Residential Section or any other portion of the Building or the Condominium that may affect RC's obligations pursuant to this Agreement, and the Condominium Board is not required to rebuild, and elects not to rebuild the Condominium, then, Condominium Manager may terminate this Agreement, such termination to be effective as of the date of delivery of a written notice of termination given by Condominium Manager to RC, or such other date specified in the notice.

5.3.5 Casualty Affecting the Condominium. In the event a casualty occurs affecting any or all of the Residential Section or any other portion of the Building or the Condominium that may affect RC's obligations pursuant to this Agreement, and the Condominium Board is not required to repair or restore the Condominium, and elects not to do so, then, at Condominium Manager's option, Condominium Manager may terminate this Agreement, such

termination to be effective as of the date of delivery of a written notice of termination given by Condominium Manager to RC, or such other date specified in the notice.

5.4 Conditions of Termination; Transition Procedures. The obligation to pay all amounts required to be paid to RC under this Agreement, including the Management Fee, prorated to the date of termination, shall survive the termination of this Agreement. On the expiration or earlier termination of this Agreement for any reason: (a) RC shall deliver to Condominium Manager a final accounting, reflecting the balance of income and expenses of the Condominium as of the date of expiration or earlier termination, such accounting to be delivered within ninety (90) days after the effective date of the expiration or earlier termination of the Term; (b) any monies of the Condominium held by RC for Condominium Manager shall be paid to Condominium Manager or, if directed by Condominium Manager, to the Condominium Board; and (c) all books and records of account, contracts, leases, receipts for deposits, unpaid bills, and other papers or documents that pertain to the Condominium, and that pertain to the Condominium Board, shall be delivered to Condominium Manager. Effective as of the end of the Term, the Condominium Manager shall be responsible for the payment of any unpaid bills for any purposes previously approved by the Condominium Board as part of its approval of the Budget. During the period expiring on the first anniversary of the expiration or earlier termination of this Agreement, Condominium Manager shall have the opportunity to review the books and records of RC related to subparagraph (a) and (b) above, and request appropriate reconciliation adjustments to be made by RC.

6. **ENFORCEMENT RIGHTS.** If RC is requested and agrees to collect Condominium assessments and charges from any or all of the Unit Owners, Condominium Manager shall use its best efforts to ensure that RC will be authorized by the Condominium and/or the Condominium Board to take all action on behalf of the Condominium Board, consistent with applicable law, including the Condominium Act, and the Condominium Documents, and subject to guidelines approved by the Condominium Board, to enforce collection of assessments and charges from Unit Owners, and to register a charge or lien on behalf of the Condominium Board against a Unit should the Unit Owner of that Unit fail to pay assessments, fees, and charges, and take such other appropriate action for purposes of collection, in the name of the Condominium Board. RC may satisfy assessments and charges of record on payment and render statements as to the current status of a Unit Owner's account. Any assessments and charges against a Unit Owner shall be limited to the Unit owned by the defaulting Unit Owner and shall be filed in accordance with the Condominium Act. Condominium Manager shall use its best efforts to ensure that the Condominium Board shall be responsible to provide aid and assistance to RC in any reasonable manner requested by RC in the collection of assessments and charges.

7. **REMEDIES.** Upon the occurrence of an Event of Default by either party under this Agreement which is not timely cured or corrected, the non-defaulting party may, in addition to any other remedy given to it by this Agreement or in law or in equity, bring an action against the defaulting party for damages, specific performance, injunctive relief, and/or such other rights and remedies as it may have. The defaulting party shall be liable for the non-defaulting party's reasonable attorneys' fees and costs incurred thereby. All of such rights on default shall be cumulative, and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

8. INDEMNIFICATION.

8.1 Condominium to Hold RC Harmless. Except for a breach of the Condominium Documents, gross negligence, intentional or willful misconduct or acts amounting to fraud of RC, Condominium Manager shall require in the Condominium Management Agreement that the Condominium will hold and save RC and its Affiliates free and harmless from all claims, damages, and costs incurred by reason of any cause whatsoever in providing the Management Services. Additionally Condominium Manager shall ensure that the Condominium Board will be authorized to and does agree to reimburse RC on demand for any monies (including reasonable attorneys' fees) that RC is required to pay in connection with, or as an expense in defense of, any claim, civil or criminal action, proceeding, charge or prosecution, law, regulation, requirement, contract or award relating to its performance of the Management Services, except for matters resulting from the gross negligence, or the intentional or willful misconduct or acts amounting to fraud of RC. Subject to the same limitations, Condominium Manager shall ensure that the Condominium Board will be authorized and does agree to pay all reasonable costs for RC to defend promptly and diligently, any claim, action, or proceeding against Condominium Manager, RC, Condominium and/or the Condominium Board, whether jointly, severally or in any combination, which arises out of or is connected with any of the foregoing. Condominium Manager shall use its best efforts to ensure that the Condominium Board will be authorized to hold and shall hold RC harmless and to fully indemnify RC from any judgment, loss, or settlement on account thereof, subject as aforesaid. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

8.2 Limitation on Liability. RC assumes no liability whatsoever for (a) any acts, omissions or conduct of the Condominium Manager, Condominium or the Condominium Board, or any previous boards, or any current or previous Unit Owners (including their guests, invitees or permitted users), or any previous management of any of them; (b) any failure of or default by any individual Unit Owner in the payment of any assessment or other charges due to the Condominium or in the performance of any obligations owed by any Unit Owner to the Condominium; (c) violations of environmental or other regulations that may become known during the period this Agreement is in effect provided, however, such violation did not arise out of any negligent act or omission by RC; and (d) any and all claims or damages or injuries to persons or property by reason of any cause whatsoever, either in or about the Building, the Condominium, or any Residential Unit when and during the time that RC is providing Management Services or otherwise in carrying out the provisions of this Agreement, whether under express statement in this Agreement or acting under the express or implied direction of Condominium Board, unless such claim results from the gross negligence, intentional or willful misconduct or acts amounting to fraud of RC or one of its employees in performing the Management Services or otherwise carrying out the provisions of this Agreement.

9. REPRESENTATIONS AND WARRANTIES OF CONDOMINIUM MANAGER.

9.1 Representations and Warranties of Condominium Manager. To induce RC to enter into this Agreement, Condominium Manager hereby makes the following representations and warranties as of the date hereof:

9.1.1 Authority. This Agreement has been duly authorized, executed, and delivered by Condominium Manager and constitutes the legal, valid, and binding obligation of Condominium Manager enforceable in accordance with the terms hereof. Condominium Manager shall establish the Condominium and the Condominium Board so that they are authorized and capable under the Condominium Documents to perform those acts, take such actions, delegate such functions, or give such approvals as required to be given under this Agreement subject to the restrictions set forth in the Condominium Act.

9.1.2 No Claims. There is no claim, litigation, proceeding, or governmental investigation pending (or as far as is known to Condominium Manager, threatened) against or relating to Condominium Manager, the properties or business of Condominium Manager or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of Condominium Manager to enter into this Agreement or to carry out its obligations hereunder, and to Condominium Manager's knowledge there is no basis for any such claim, litigation, proceeding, or governmental investigation, except as has been fully disclosed in writing to RC.

9.1.3 No Conflicting Agreements. Neither the consummation of the actions contemplated by this Agreement on the part of Condominium Manager to be performed, nor the fulfillment of the terms and conditions of this Agreement, conflicts with or will result in the breach of any of the terms or conditions of, or constitutes a default under, any agreement, indenture, instrument or undertaking to which Condominium Manager is a party or by which it or its assets is bound.

9.2 Indemnification by Condominium Manager. Condominium Manager shall indemnify, defend, and hold RC harmless from and against all claims, losses, liabilities, penalties, costs and expenses (including reasonable attorneys' fees and expenses and litigation costs and expenses), and damages (excluding consequential, punitive and exemplary damages) based on or arising from a breach of any representation or warranty set forth in this Section 9.

10. REPRESENTATIONS AND WARRANTIES OF RC.

10.1 Representations and Warranties of RC. To induce Condominium Manager to enter into this Agreement, RC hereby makes the following representations and warranties as of the date hereof:

10.1.1 Authority. This Agreement has been duly authorized, executed, and delivered by RC and constitutes the legal, valid, and binding obligation of RC enforceable in accordance with the terms hereof.

10.1.2 No Claims. There is no claim, litigation, proceeding, or governmental investigation pending (or as far as is known to RC, threatened) against or relating to RC, the properties or business of RC or the transactions contemplated by this Agreement, which does or may reasonably be expected to materially and adversely affect the ability of RC to enter into this Agreement or to carry out its obligations hereunder, and to RC's knowledge, there is no basis for any such claim, litigation, proceeding, or governmental investigation, except as has been fully disclosed in writing to Condominium Manager.

10.1.3 No Conflicting Agreements. Neither the consummation of the actions contemplated by this Agreement on the part of RC to be performed, nor the fulfillment of the terms and conditions of this Agreement, conflicts with or will result in the breach of any of the terms or conditions of, or constitutes a default under, any agreement, indenture, instrument or undertaking to which RC is a party or by which it or its assets is bound.

10.2 Indemnification by RC. RC shall indemnify, defend and hold Condominium Manager harmless from and against all claims, losses, liabilities, penalties, costs and expenses (including reasonable attorneys' fees and expenses and litigation costs and expenses), and damages (excluding consequential, punitive and exemplary damages) based on or arising from a breach of any representation or warranty set forth in this Section 10.

11. INSURANCE.

11.1 Condominium Insurance.

A. Condominium Manager will ensure that the Condominium Documents require the Condominium to procure and maintain, or cause to be procured and maintained, commencing with the Commencement Date and thereafter during the Term of this Agreement, with insurance companies with an A.M. Best rating of A-, VIII or better, a minimum of the following insurance:

(1) Property insurance on the common elements and limited common elements ("Common Elements") of the Condominium against loss or damage by fire, theft, earthquake, flood, wind, lightning and all other risks covered by an "all risk" property insurance policy including coverage for law and ordinance and not subject to coinsurance provisions, in an amount not less than 100% of the replacement cost of the entire Common Elements (excluding excavation and foundation costs) thereof;

(2) Boiler and machinery insurance against loss or damage from explosion of boilers or pressure vessels to the extent applicable to the Common Elements on a comprehensive basis. If the property insurance and boiler policies are not written with the same insurer, then both policies shall contain a joint loss agreement provision;

(3) Business interruption insurance for the benefit of the Condominium, Condominium Manager and/or RC and the Unit Owners covering loss of profits and necessary continuing expenses for interruptions caused by any occurrence covered by the insurance referred to in Section 11.1.A(1) and 11.1.A(2) covering at least two (2) years with an extended period of indemnity of at least 180 days, of a type and in amounts as are determined by the Condominium Board;

(4) Such other insurance in amounts as the Condominium Board in its reasonable judgment deems advisable for protection against claims, liabilities and losses arising out of or connected with the operation of the facility.

B. Condominium Manager will ensure that the Condominium Documents require that all Unit Owners other than the Residential Unit Owners, commencing with the Commencement Date and thereafter during the Term of the Agreement, to procure and maintain, with insurance companies with an A.M. Best rating of A-, VIII or better, a minimum of the following insurance:

(1) General liability insurance (including to the extent applicable liquor liability insurance) against claims for bodily injury, death or property damage occurring on, in, or about their Unit, and (to the extent applicable) automobile liability insurance on vehicles operated in conjunction with the Premises, with a combined single limit for each occurrence in customary amounts reasonably satisfactory to RC and Condominium Manager.

(2) Workers' compensation insurance as may be required under applicable Legal Requirements, and employer's liability insurance, in such amounts as are customarily obtained by operators of comparable businesses.

C. All policies under Section 11.1.A shall contain a waiver of subrogation waiving all rights or recovery against each Unit Owner, Condominium Manager or RC. The premium for all the policies of insurance under 11.1.A will be allocated on an equitable basis between Unit Owners.

D. All policies of insurance required under Section 11.1.A shall be carried in the name of the Condominium and all other entities required by contract. The policies required under Section 11.1.A shall also include each Unit Owner as an additional insured, to the extent their interests may appear. Upon notice by the Unit Owner, the Condominium shall also have the policies required under Sections 11.1.A(1), (2), and (3) include any Unit Owner's mortgagee as an additional insured or a mortgagee. Any property losses thereunder shall be payable to the respective parties as their interests may appear. Any Mortgage encumbering the Common Elements shall contain provisions to the effect that proceeds of the insurance policies required to be carried under Sections 11.1.A(1) and (2) shall be available for repair and restoration of the Common Elements.

E. The Condominium Board shall deliver to each insured and additional insured certificates of insurance with respect to all policies so procured pursuant to Section 11.1.A and, in the case of insurance policies about to expire, shall deliver certificates with respect to the renewal

thereof. Each Unit Owner (other than the Residential Unit Owners) shall deliver to the Condominium Board, to the Condominium Manager and/or RC certificates of insurance with respect to all policies so procured pursuant to Section 11.1.B and, in the case of insurance policies about to expire, shall deliver certificates with respect to renewals thereof. All certificates of insurance provided for under Section 11.1 shall, to the extent obtainable, state that the insurance shall not be cancelled or materially changed without at least thirty (30) days' written notice to the certificate holder. Upon request, the Condominium Board shall also deliver copies of the certificates of insurance to any mortgagee.

11.2 Condominium Manager Insurance.

Condominium Manager shall procure and maintain general liability insurance in a minimum amount of $10 million (or such greater amount that may be reasonably required by RC depending upon the duties and responsibilities that are retained by Condominium Manager and not delegated to RC hereunder), and name Condominium and RC as additional insureds on such policy.

11.3 Liability; Other Insurance.

A. Condominium Manager shall cause the Condominium to procure and maintain (which it may procure and maintain through Condominium Manager, RC or other third party), with respect to RC's duties and responsibilities as described in this Agreement, commencing with the Commencement Date and thereafter during the Term of the Agreement, with insurance companies with an A.M. Best rating of A-, VIII or better, a minimum of the following insurance:

(1) Comprehensive general public liability insurance, and umbrella/excess liability insurance, in amounts no less than One Hundred Million Dollars ($100,000,000) for personal injury and death, and property damage, which shall, among other risks, include coverage against liability arising out of the ownership or operations of motor vehicles, as well as coverage in such amount against all claims brought anywhere in the world arising out of alleged (i) bodily injury, (ii) death, (iii) property damage, (iv) assault or battery, (v) false arrest, detention, or imprisonment or malicious prosecution, (vi) wrongful entry or eviction, (vii) liquor law liability and (viii) contractual liability of Condominium and/or the Condominium Board, Condominium Manager and RC. Should the insurance be part of a blanket insurance program, the $100,000,000 limit coverage shall be written on an annual per location basis. Such insurance shall name RC, Condominium Manager, the Condominium and the Condominium Board as named insured. Such stand alone policy(ies) shall be considered primary and noncontributory to any insurance maintained by RC.

(2) Condominium Manager shall deliver to RC a certificate of insurance with respect to the policy procured pursuant to (1) above and, in the case of expiration of such policy, shall deliver certificates with respect to the renewal thereof at least thirty (30) days prior to expiration. All certificates of insurance provided for under this Section 11.3 shall, to the extent obtainable, state that the insurance shall

not be cancelled or materially changed without at least thirty (30) days' prior written notice to the certificate holder.

(3) Should Condominium Board elect not to procure such insurance through RC, RC shall have no obligation to thereafter include the Condominium in its blanket insurance program (with respect to the insurance described in Section 11.3A(1)) for the balance of the Term.

B. RC shall, with respect to its duties and responsibilities as described in this Agreement, commencing with the Commencement Date and thereafter during the Term of the Agreement, procure and maintain, either with insurance companies with an A.M. Best rating of A-, VIII or better, a minimum of the following insurance:

(1) Workers' compensation insurance, or be qualified as a self-insured, as may be required under applicable legal requirements, and employer's liability insurance and employment practices liability insurance, in such amounts as are customarily obtained by owners or operators of comparable properties, covering all of RC's employees working in connection with the Condominium;

(2) A blanket fidelity bond covering RC and all officers, employees and agents of RC who handle or are responsible for handling the Condominium's monies and properties in connection with this Agreement, in such amount as may be required by the Condominium Documents, or if no such amount is provided in the Condominium Documents, in such amounts as are customarily obtained by owners or operators of comparable properties, with the Condominium and Condominium Manager named as loss payees to the extent their interests may appear.

(3) Such other insurance in amounts as Condominium Manager or RC in their reasonable judgment deem advisable for protection against claims, liabilities and losses arising out of or connected with the services to be provided under this Agreement.

(4) Subject to Condominium Manager's reasonable agreement, all insurance described in this Subsection B may be obtained by RC by endorsement or equivalent means under its blanket insurance policies.

(5) RC shall deliver to Condominium Manager certificates of insurance with respect to all policies procured under this Subsection (B) and, in the case of insurance policies about to expire, shall deliver certificates with respect to the renewal thereof at least thirty (30) days prior to expiration. All certificates of insurance provided for under this Subsection (B) shall, to the extent obtainable, state that the insurance shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the certificate holder. Upon request, RC shall also deliver copies of the certificates of insurance to any mortgagee.

C. If Condominium Manager (acting on behalf of Condominium) elects to procure liability insurance through RC, RC may, by legally qualifying itself as a self insurer, self insure or otherwise retain such risks or portions thereof as good insurance practice would dictate and as it does with respect to other comparable properties it owns, leases or manages in the United States. Such self insurance shall not exceed a maximum of One Million Dollars ($1,000,000) per occurrence and is contingent on RC maintaining a net worth of One Hundred Million Dollars ($100,000,000). Such insurance shall name RC as the named insured and the Condominium and Condominium Manager as additional insureds. Subject to Condominium Manager's reasonable agreement, all insurance described in this Subsection C may be obtained by RC by endorsement or equivalent means under its blanket insurance policies.

D. Insurance premiums and any other costs or expenses with respect to the insurance required under Section 11.3B (and, to the extent Condominium Board elects to procure liability insurance through RC, Section 11.3A) shall be a reimbursable expense of RC and included in each Budget. Any premiums and costs under RC's blanket insurance or self-insurance programs shall be allocated on an equitable basis to the properties participating under RC's blanket insurance or self-insurance programs and shall be treated as a reimbursable cost and provision for such shall be made in the Budget. Any reserves, losses, costs or expenses incurred by RC under any liability or workman's compensation policy shall also be treated as a reimbursable cost and provision for such shall be made in the Budget. Upon termination of the Agreement, an escrow fund in an amount established by RC and reasonably acceptable to Condominium Manager shall be established by RC and funded by the Condominium to cover the amount of any Insurance Retention and all other costs which will eventually have to be paid by either RC or Condominium Manager with respect to pending or contingent claims, including those which arise after termination for causes arising during the Term of the Agreement. If Condominium fails to fund such escrow fund, RC shall have the right (without affecting RC's other remedies under this Agreement) to withdraw the amount of such expenses from any operating or reserve accounts held by or under the control of RC. For purposes of this Section 11.3D, "Insurance Retention" shall mean the amount of any loss or reserve under RC's blanket insurance or self-insurance programs which is allocated to the Condominium (other than the Hotel), not to exceed the higher of (A) the maximum per occurrence limit established for similar properties participating in such programs (Condominium Manager hereby acknowledges that, under RC's current program, such Insurance Retention is Twenty-five Thousand Dollars ($25,000) per occurrence), or (B) such other deductible as may be imposed by the insurer.

E. If Condominium Manager (acting on behalf of Condominium) elects not to use RC's insurance to satisfy the insurance requirements described in Section 11.3A(1), Condominium Manager shall, at least ninety (90) days prior to the time such insurance is required to be effective, provide RC with a copy of the policy and proposed certificate. If RC disputes that such insurance satisfies the requirements of Section 11.3A(1), the matter shall be resolved by an Expert to be selected by both RC and the Condominium Board as provided in Subsection F below. If the Expert concludes that the insurance to be procured by the Condominium does not satisfy the requirements of Section 11.3A(1), then Condominium Manager shall cause the Condominium to modify such policy as may be required to satisfy such requirements, as shall be determined by the Expert. If the Expert concludes that the insurance to be procured by the Condominium does satisfy

the requirements of Section 11.3A(1), then RC shall be entitled to procure such insurance on its own behalf as it may elect, but the cost thereof shall be solely that of RC.

F. If a matter is referred to an Expert pursuant to Subsection E above, the following provisions shall apply to such Expert's determination:

(1) The "Expert" shall mean a mutually-agreedupon recognized insurance consultant in the New York, New York area, with at least ten (10) years experience in risk management of properties similar to the Condominium. In the event either party calls for an Expert determination pursuant to the terms hereof, the parties shall have ten (10) days from the date of such request to mutually agree on one (1) recognized insurance consultant firm or individual as the Expert and, if they fail to agree, each party shall have an additional ten (10) days to each select one (1) recognized insurance consultant firm or individual as the Expert and within ten (10) days of such respective selections, the two (2) respective firms and/or individuals so selected by each of the parties hereto shall select another such recognized insurance consultant firm or individual to be the Expert. If either party hereto fails to make its respective selection of a firm or individual within the ten (10) day period provided for above, then the other party's selection shall be the Expert.

(2) The decision of the Expert shall be final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise.

(3) Each party shall be entitled to make written submissions to Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission. The parties shall render to the Expert any assistance requested of the parties. The costs of the Expert shall be reimbursable expenses and included in the Budget.

(4) If the Expert decides that a policy of insurance does not satisfy the requirements of Section 11.3A(1), the Expert shall state the changes that are necessary in order to satisfy such requirements.

(5) The terms of engagement of the Expert shall include an obligation on the part of the Expert to notify the parties in writing of his decision within thirty (30) days after the date on which the Expert has received all submissions which the Expert has requested of either of the parties (or such other period as the parties may agree or as set forth herein).

12. MISCELLANEOUS.

12.1 Further Assurances. Each of RC and Condominium Manager shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.

12.2 Waiver. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasion.

12.3 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of Condominium Manager and RC and their respective successors and permitted assigns.

12.3.1 Assignment by RC. RC shall have the right to assign its rights and obligations under this Agreement without the consent of Condominium Manager: (i) to any Affiliate (provided that (x) such Affiliate, or one of its Affiliates, owns the Ritz-Carlton Rights; (y) such Affiliate and one or more of its Affiliates (if any) operate all of the hotels in the United States which are operated under the Ritz-Carlton Rights; and (z) neither such Affiliate, nor any of its Affiliates which operate hotels under the Ritz-Carlton Rights, operates any hotels under trade names other than Ritz-Carlton); or (ii) to any assignee which is not an Affiliate, but which acquires all or a substantial part of the assets of RC (including the Ritz-Carlton Rights) and assumes the obligations of RC, including those hereunder; provided that the assignee under subsection (ii) above is either (x) the operator of the Hotel or (y) an Affiliate of such operator that, in the Condominium Manager's reasonable judgement, has sufficient experience and net worth to fulfill RC's obligations hereunder. In such latter event, RC's liability hereunder shall terminate upon such assignment, but in the event of any assignment to an Affiliate, RC shall continue to be liable under this Agreement to the same extent as though such assignment had not been made. RC may assign its rights to receive the Management Fee or portions thereof to any Person as security for indebtedness. Except as hereinabove provided, RC shall not assign its rights or obligations under this Agreement without the approval of Condominium Manager.

12.3.2 Assignment By Condominium Manager. Except for an assignment hereof to an Affiliate of Condominium Manager or to a Mortgagee, Condominium Manager shall not assign all or any portion of this Agreement without the Approval of RC.

12.4 Governing Law. This Agreement is executed pursuant to, and shall be construed under and governed exclusively by, the internal laws of the State of New York.

12.5 Amendments. This Agreement may not be modified, amended, surrendered, or changed, except by a written instrument executed by each of the parties thereto.

12.6 Estoppel Certificates. Condominium Manager and RC agree, at any time and from time to time, as requested by the other party on not less than fifteen (15) days' prior written notice, to execute and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications), certifying the dates on which required payments have been paid, stating whether, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, and any other matter reasonably requested by the other party, it being intended that any such statement delivered pursuant hereto may be relied on by others with whom the party requesting such certificate may be dealing.

12.7 Partial Invalidity. If any of the provisions in this Agreement shall be declared invalid by a final and non-appealable order, decree, or judgment of any court, such agreement shall be construed as if such provision(s) had not been inserted, unless such construction would substantially destroy the benefit of the bargain of such agreement to Condominium Manager or RC. The applicable terms and provisions of the Condominium Documents shall be deemed paramount to the terms and provisions of this Agreement and, where applicable, the terms and provisions of this Agreement shall be deemed amended to comply with the foregoing.

12.8 No Representation. In entering into this Agreement, the Condominium Manager and RC each acknowledges to the other that it has not made any representation to the other regarding projected earnings, the possibility of future success, or any other similar matter with respect to the Condominium.

12.9 Relationship. In the performance of this Agreement, RC shall act solely as a subcontractor of Condominium Manager, and shall have no agency relationship with the Condominium or the Condominium Board. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed, or construed as making RC a partner or joint venturer with either Condominium Manager, the Condominium or the Condominium Board. Nor does this Agreement or any other agreement, instrument, document, or transaction create any similar relationship. No agreement, instrument or transaction, including this Agreement, requires RC to bear any portion of the losses arising out of or connected with the ownership or operation of the Condominium or out of or connected with the operations of Condominium Manager. The Condominium Manager agrees that it will not make any contrary assertion, contention, claim, or counterclaim in any action, suit, arbitration, or other legal proceedings involving RC, Condominium Manager, the Condominium or the Condominium Board.

12.10 No Conflict of Interest. Condominium Manager expressly acknowledges and represents that it consents to RC's other activities with respect to the Hotel Unit of the Condominium, including managing the Hotel and representing the Hotel Unit Owner.

12.11 Extraordinary Events. Notwithstanding anything else in this Agreement, if any party's failure to comply with, perform, or satisfy any representation, warranty, covenant, undertaking, obligation, standard, test, or condition set forth in this Agreement is caused in whole or in part by any Extraordinary Event(s), such failure shall not constitute a default under this Agreement, and such failure shall be excused for as long as the failure is caused in whole or in part by such Extraordinary Event(s).

12.12 Interpretation. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

12.13 Counterparts. Two copies of this Agreement shall be executed by the parties hereto and may be executed in any number of counterparts, each of which shall be deemed to be an

original and need not be signed by more than one of the parties hereto and all of which shall constitute one and the same agreement.

12.14 Notices. All notices, requests, demands, statements, approvals, consents, and other communications required or permitted to be given under the terms of this Agreement shall be in writing and, at the option of the party giving notice, delivered by hand against receipt, sent by certified mail (postage prepaid and return receipt requested), carried by reputable overnight/international courier service, or transmitted by telefax to the respective party at the following addresses:

To Condominium Manager:	Millennium Partners BPC Management LLC 1995 Broadway Third Floor New York, New York 10023 Attn: Chief Financial Officer Phone: (212) 875-4900 Fax: (212) 595-1831
with a copy to:	Eric Landau, Esq. Battle Fowler LLP 75 East 55th Street New York, New York 10022
To RC:	The RITZ-CARLTON Hotel Company, L.L.C. 3414 Peachtree Road, NE, Suite 300 Atlanta, Georgia 30326 Attn: General Counsel Phone: (404) 237-5500 Fax: (404) 233-1745
with a copy to:	The RITZ-CARLTON Hotel Company, L.L.C. 10400 Fernwood Road Bethesda, Maryland 20817 Attn: Law Department Operations Phone: (301) 380-7584 Fax: (301) 380-6727
with a copy to:	The Ritz-Carlton Hotel, Downtown New York Battery Park City Site #1 New York, NY [_____] Attn: General Manager Phone: (212) _____ Fax: (212) _____

or at such other address as from time to time designated by notice from the respective party to the other party. Any such notice or communication shall be deemed to have been given at the date and time of: (a) receipt or first refusal of delivery, if sent via certified mailed or delivered by hand; (b) posting thereof, if sent via reputable overnight/internationalcourier service; or (c) either the date sent (if sent during the receiving party's normal business hours) or next succeeding date on which the receiving party is normally open for business, if sent by telefax. Condominium Manager and RC each agree that on giving of any notice, it shall use its reasonable efforts to advise the other by telephone that a notice has been sent hereunder. Such telephonic advice shall not, however, be a condition to the effectiveness of notice hereunder.

12.15 Conditions to Obligations. Each party's obligations under this Agreement shall be subject (a) to the execution and delivery by the parties thereto, and filing and recordation on the land records and all other appropriate places of official record, of the Condominium Documents in form and substance reasonably satisfactory to RC; (b) receipt at least sixty (60) days prior to the projected Commencement Date (or if not obtainable by then, as soon thereafter as legally obtainable but in any case prior to the Commencement Date) of all licenses, permits and other approvals and instruments necessary for RC to perform its duties hereunder and RC hereby agrees that it will diligently pursue obtaining all such licenses and permits; (c) each party being fully satisfied as to the completeness, accuracy and validity of the representations and warranties made by the other in Sections 9 and 10, respectively; and (d) the execution of this Agreement by Condominium Manager and RC.

12.16. Notice to Mortgagee. In the event of an occurrence of an Event of Default/Condominium Manager or any other occurrence which entitles RC to terminate this Agreement, and in the event that RC gives written notice thereof to Condominium Manager pursuant to Section 5.2 of this Agreement or any other provisions of this Agreement, RC shall also give a duplicate copy (herein referred to as the "First Notice") of such notice to the Mortgagee under any first Mortgage placed by the Developer encumbering the Building and the land on which it is to be constructed, at the address to be supplied by Condominium Manager or such Mortgagee. Any such notice will be sent in the manner described in Section 12.14 hereof. Mortgagee shall have the right, but not the obligation, to cure any Event of Default/Condominium Manager or any other occurrence which entitles RC to terminate this Agreement, and Mortgagee shall be granted an extra thirty (30) days in which to effectuate such cure (or such longer period of time as may be necessary, provided that Mortgagee is diligently pursuing such cure). In the event that such Event of Default/Condominium Manager or any other occurrence which entitles RC to terminate this Agreement is not cured within such applicable cure period and RC intends to exercise its remedy of terminating this Agreement due to the existence of such Event of Default/Condominium Manager or any other occurrence which entitles RC to terminate this Agreement, RC shall send a second notice (the "Second Notice") to the Mortgagee, to the same address and in the same manner applicable to the First Notice, stating RC's intention to terminate this Agreement. RC shall forbear from taking any action to terminate this Agreement for a period of thirty (30) days after the service of the Second Notice (if such Second Notice is required, as set forth above). Mortgagee shall have the right, but not the obligation, to cure any Event of Default/Condominium Manager, and Mortgagee shall be granted an extra thirty (30) days in which to effectuate such cure (or such longer period of time as may be necessary, provided that Mortgagee is diligently pursuing such cure). It

is understood that any failure by RC to give such a duplicate notice (either the First Notice or the Second Notice, as the case may be) to the Mortgagee shall not itself be an Event of Default/RC under this Agreement, but rather shall operate only to void the effectiveness of any notice by RC to Condominium Manager pursuant to Section 5.2, until such First Notice or Second Notice (as the case may be) has been properly sent to such Mortgagee. Except as specifically limited by this Section 12.16, nothing herein shall preclude RC from exercising any of its rights or remedies against Condominium Manager with respect to any Event of Default/Condominium Manager under this Agreement.

12.17. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written.

13. DEFINITIONS.

13.1 Definitions. In this Agreement (including any addenda, exhibits, or riders), the following identified terms have the following meanings:

"Additional Hotel Concierge Services" has the meaning ascribed to that phrase in Section 3.3.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, of the power to vote 50% or more of the voting interest of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting interest, by contract or otherwise.

"Agreement" means this Agreement (including the exhibits, schedules and addenda hereto), as amended, restated or supplemented from time to time.

"Approval," "Approve," or **"Approved"** means prior written approval or consent, not to be unreasonably withheld, delayed or conditioned.

"Approved Name" has the meaning ascribed to that term in Section 2.13.2.

"Base Hotel Concierge Services" has the meaning ascribed to that phrase in Section 3.1.

"Budget" means the budget of the Condominium for a calendar year as approved from time to time by the Condominium and/or the Condominium Board pursuant to the Condominium Documents, which shall include an allocation of funds at a minimum for (a) maintenance, repair and operation of the Condominium, including the Common Elements; (b) the operation of the Condominium; and (c) the Reserve Account Obligations.

"Code Requirements" has the meaning ascribed to that term in Section 2.3.

"Commencement Date" means the date that RC receives written notice from Condominium Manager that Condominium Manager, pursuant to the Condominium Management Agreement, has commenced to perform management services for the Condominium Board related to the Condominium, which date may be no later than (a) the date that is six (6) months after the official opening of the Hotel for business, or (b) the date that is the earlier of (i) the date that the Developer conveys legal title to the first Residential Unit, or (ii) the date that the first Residential Unit is occupied for residential purposes.

"Common Elements" means the portions of the Condominium, including the limited common elements, which are not included in any Unit, as more specifically defined and identified in the Condominium Documents, and shall include but are not limited to any lobby, corridors, elevators, doors, entrances, exterior and interior walls of the Condominium other than those within the boundaries of any Unit.

"Common Expense" means any expense or cost of the Condominium arising out of or related to the management, operation and maintenance of the Condominium as more particularly defined and identified in the Condominium Documents or the Condominium Act.

"Condominium" has the meaning ascribed to that term in the Recitals.

"Condominium Act" means Article 9-B of the Real Property Law of the State of New York.

"Condominium Board" means the duly elected governing body of the Condominium and/or any commercial or residential sub-boards, as the case may be.

"Condominium Bylaws" means the bylaws for the Condominium.

"Condominium Documents" means the Declaration of Condominium, Articles, By-laws, Floor Plans and other operating documents under which the Condominium is created, organized and operated in accordance with the Condominium Act, which also includes matters related to the operation of the Condominium and the authority and responsibilities of the Condominium Board.

"Condominium Management Agreement" has the meaning ascribed to that term in the Recitals.

"Condominium Manager" has the meaning ascribed to that term in the Preamble.

"CPI" means the "Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, U.S. Cities Average (1982-1984=100)", published by the United States Bureau of Labor Statistics, or any revisions or replacement thereto subsequently published, with any necessary adjustments. Except as otherwise specifically stated herein, whenever a number or an

amount is required to be "adjusted by the CPI", or similar terminology, such adjustment shall be equal to the percentage increase or decrease in the CPI for the month in which such adjustment is to be made, as compared to the CPI for the month in which the Commencement Date occurred (or, if specifically set forth in the applicable provision, any other month).

"**Developer**" has the meaning ascribed to that term in the Recitals.

"**Environmental Laws**" means any rules, regulations, laws, and/or other enactments now or hereafter in effect and applicable to the Common Elements, or to activities carried on with respect thereto (whether of a national, regional, state, or local government, agency, or instrumentality), dealing with the use, generation, treatment, storage, disposal, or abatement of Hazardous Materials.

"**Event of Default/Condominium Manager**" has the meaning ascribed to that phrase in Section 5.2.1.

"**Event of Default/RC**" has the meaning ascribed to that phrase in Section 5.3.1.

"**Expert**" has the meaning ascribed to that term in Section 11.3.F.

"**Extraordinary Event**" means any of the following events, regardless of where it occurs or its duration: acts of nature (including hurricanes, typhoons, tornadoes, cyclones, other severe storms, lightning, floods, earthquakes, volcanic eruptions, disease, epidemics, fires and explosions); acts of war; riots, or other civil commotion; terrorism (including hijacking, sabotage, bombing, murder, assault, and kidnapping); strikes or similar labor disturbances; shortage of critical materials or supplies; action or inaction of governmental authorities having jurisdiction over the Condominium (including the imposition of restrictions on employee wages or other material aspects of operation); and any other events beyond the control of RC, Condominium Manager, the Condominium Board or the Condominium.

"**Fee Increase**" has the meaning ascribed to that term in Section 4.1.

"**First Notice**" has the meaning ascribed to that term in Section 12.16.

"**Foreclosure Successor**" has the meaning ascribed to that term in Section 5.3.1.

"**Hazardous Materials**" means any substance or material containing one or more of any of the following: hazardous material, hazardous waste, hazardous substance, regulated substance, petroleum, pollutant, contaminant, or asbestos, as such terms are as of the date hereof or thereafter defined in any applicable Environmental Law, or otherwise generally understood, in such concentration(s) or amount(s) as may require clean-up or removal, or that may present a risk of harm to guests, invitees, or employees.

"**Hotel**" has the meaning ascribed to that term in the Recitals.

"**Hotel Concierge Services**" means those certain Hotel-related services that Manager shall provide to Residential Unit Owners, in accordance with Section 3 of this Agreement.

"**Hotel Unit**" has the meaning ascribed to that term in the Recitals.

"**Hotel Unit Owner**" means the Owner of the Hotel Unit.

"**Listed Hotel Concierge Services**" has the meaning ascribed to the phrase in Section 3.2.

"**Management Fee**" has the meaning ascribed to that term in Section 4.1

"**Management Services**" has the meaning ascribed to that term in Section 2.1.

"**Mortgage**" means a loan made to Developer (or an Affiliate thereof), which loan is secured by a leasehold mortgage or deed of trust upon the Residential Section as a whole.

"**Mortgagee**" means the holder of any first Mortgage.

"**Operating Agreement**" has the meaning ascribed to that term in the Recitals.

"**Person**" means an individual (and the heirs, executors, administrators, or other legal representatives of an individual), a partnership, a limited liability company, a corporation, a government or any department or agency thereof, a trustee, a trust, and any unincorporated organization.

"**RC**" has the meaning ascribed to that term in the Preamble.

"**Reserve Account**" has the meaning ascribed to that term in Section 4.3.

"**Reserve Account Obligations**" has the meaning ascribed to that term in Section 4.3.

"**Residential Section**" has the meaning ascribed to that term in the Recitals.

"**Residential Unit**" means a Unit in and part of the Residential Section as more specifically identified and defined in the Condominium Documents.

"**Residential Unit Owner**" means a Unit Owner of a Residential Unit.

"**Retail Unit**" has the meaning ascribed to that term in the Recitals.

"**Ritz-Carlton Marks**" means certain trademarks and services marks including the mark RITZ-CARLTON, the LION AND CROWN Logo, and such other names, slogans, logos or other indicia of the Ritz-Carlton Hotel Company L.L.C. or any of its Affiliates as are set forth on

Exhibit A, attached hereto and incorporated herein by reference, as may be added to from time to time by RC or its Affiliates.

"Ritz-Carlton Rights" means all service marks, trademarks, trade names, insignias, logos, emblems, signs, indicia of origin and combinations thereof that are owned or used by RC or any of its Affiliates or that by reason of extent of usage are associated with hotels or other facilities owned or operated by RC or its Affiliates, including but not limited to the name and mark Ritz-Carlton and the distinctive lion and crown logo, including "Ritz-Carlton Marks".

"Ritz-Carlton Standards" means (i) with respect to the physical maintenance of the Common Elements of the Residential Section, the standards applicable to the physical standards of maintenance and repair generally applicable to luxury condominium residential buildings in the New York, New York, metropolitan area (the "Physical Standards"); and (ii) with respect to operational/service standards, the services which are described on Schedule 1 annexed hereto (the "Operating Standards").

"Second Notice" has the meaning ascribed to that term in Section 12.16.

"Term" has the meaning ascribed to that term in Section 5.1.

"Unit" means a part of the Condominium which is subject to exclusive ownership, which part of the Condominium is more specifically identified and defined in the Condominium Documents, and shall be deemed to include a Residential Unit.

"Unit Owner" means the record owner of legal title of a Unit, whether one or more Persons, but excluding those having such interests merely as security for the performance of an obligation; *provided, however*, that on foreclosure, trustee sale, or other similar transfer of legal or beneficial title to any such interest, the person or entity that receives such title shall be deemed a Unit Owner and shall be subject to the terms and conditions of this Agreement. The term "Unit Owner" shall be deemed to include a Residential Unit Owner.

13.2 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all genders; the singular shall include the plural and the plural shall include the singular. References to days, months, and years are to calendar days, calendar months, and calendar years, respectively, unless the context clearly otherwise requires. The word "include" and similar terms such as "included" and "including" shall be terms of enlargement and shall not imply any restriction or limitation unless the context clearly otherwise requires. The table of contents and titles or sections and paragraphs in this Agreement, and all references in this Agreement to sections, paragraphs, clauses, exhibits, addenda, or riders shall refer to the corresponding section, paragraph, clause, exhibit, addendum, or rider attached to this Agreement, unless otherwise specified. Any term not defined in this Agreement shall have the meaning given to such term in the Condominium Documents, and any term defined neither in this Agreement nor in the Condominium Documents shall have the meaning given to such term in the Condominium Act in effect as of the date of this Agreement first hereinabove stated.

13.3 Exhibits, Addenda, and Riders. All exhibits, addenda, and riders attached hereto are by reference hereby made a part hereof.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have affixed or caused to be affixed their respective signatures on this 31st day of August, 1999.

RC:

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

By: _____

Name: Kevin M. Kimball
Title: Vice President
Address: 10400 Fernwood Road
Bethesda, MD 20817

CONDOMINIUM MANAGER:

MILLENNIUM PARTNERS BPC MANAGEMENT LLC

By: MILLENNIUM PARTNERS MANAGEMENT LLC

By: Millennium Manager I, Inc.

By: _____

Name: Brian Collins
Title: Vice President

Address: _____

_____

EXHIBIT A

RITZ-CARLTON MARKS



THE RITZ-CARLTON®

REGISTERED TRADEMARKS OF RITZ-CARLTON HOTEL COMPANY, L.L.C.

TRADEMARK	REG. NO.
RITZ (stylized)	1,535,834
RITZ-CARLTON	1,094,823
THE RITZ-CARLTON CLUB	1,631,978
THE RITZ-CARLTON ORCHESTRA	1,756,567
PUTTIN' ON THE RITZ	1,590,786
THE RITZ KIDS	1,795,438
LION & CROWN DESIGN	1,749,744
A LA RITZ	1,577,684
RITZ-CARLTON & DESIGN	1,905,234

SCHEDULE 1

Operating Standards

a. Doorman

A uniformed doorman will be on duty at the Lobby of the Building sixteen (16) hours a day, seven (7) days a week, to assist those arriving and departing.

b. Concierge

A concierge station will be located in the Residential Lobby and will be attended by a uniformed concierge twenty-four (24) hours a day, seven (7) days a week.

The concierge will be responsible for greeting, identifying and announcing residents and guests, monitoring security systems, handling keys, packages and deliveries for residents, coordinating maintenance requests and maintaining contact with the Hotel's concierge staff and such other Hotel staff as are necessary to perform the Hotel Concierge Services.

c. Mail

All incoming mail will be delivered to the Unit Owners by the United States Postal Service and deposited by its personnel in mail boxes located in the Residential Section Lobby. Residential Unit Owners will pick up mail in the Residential Section Lobby. The concierge will be responsible for the distribution of all packages or oversize pieces of mail to the Residential Unit Owners.

d. Deliveries

The building staff will be responsible for delivery of packages (excluding standard mail) to residents. Food deliveries, overnight mail and other clearly urgent packages will be delivered as soon as practically possible. Other packages such as dry cleaning or hand delivered packages will be delivered through the building several times per day.

e. Housekeeping

The building staff will be responsible for maintaining the appearance of the common areas of the condominium to a first class, luxury standard for residential condominium buildings in New York. This includes the following;

- Regularly cleaning the floors, walls, furniture and windows of the lobbies, hallways and service areas.
- Removing garbage on a timely basis.

- Cleaning the sidewalks in front of the building (including snow removal).

- Performing remedial cleaning activities when required to maintain first class luxury standards, including shampooing carpets, power washing sidewalks, replacing upholstery or wallpaper when visibly worn, and repainting common areas.

f. Maintenance

Maintenance staff will promptly respond to any maintenance request that is the responsibility of the Condominium Board.

CONDOMINIUM MARKETING LICENSE AGREEMENT

between

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.
("Licensor")

and

MILLENNIUM BPC DEVELOPMENT LLC
("Licensee")

covering

The Residences at Ritz-Carlton, Downtown New York
Battery Park City #1
New York, New York

Dated: August 31, 1999

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CONDOMINIUM MARKETING LICENSE AGREEMENT

This CONDOMINIUM MARKETING LICENSE AGREEMENT ("Agreement") is executed as of the 31st day of August, 1999 ("Effective Date"), by:

MILLENNIUM BPC DEVELOPMENT LLC, a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1995 Broadway, Third Floor, New York, New York 10023 (as "Licensee");

and

THE RITZ-CARLTON HOTEL COMPANY, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 3414 Peachtree Road, N.E., Suite 300, Atlanta, Georgia 30326 (as "Licensor").

RECITALS:

A. Licensee intends to construct a mixed-use condominium building (the "Building") at Battery Park City Site #1, New York, New York, which will contain: (i) approximately 150 residential units (the "Residences"); (ii) a RITZ-CARLTON hotel (the "Hotel") containing approximately 316 keys; and (iii) retail space (the "Retail Space"). Upon completion of the Building, Licensee will subject the Building to a condominium regime (the "Condominium") pursuant to the Condominium Act (as defined in Section 1.1 hereof).

B. Pursuant to an Operating Agreement (the "Hotel Operating Agreement"), dated as of the date hereof, entered into by and between Licensee and Licensor, Licensee has engaged Licensor to operate the Hotel, upon completion thereof, under the name and mark "THE RITZ-CARLTON, DOWNTOWN NEW YORK."

C. Pursuant to a Pre-Commencement Agreement (the "Pre-Commencement Agreement"), dated as of the date hereof, entered into by and between Licensee and Licensor, Licensee and Licensor have agreed upon the design standards and approvals applicable to the design and construction of the Residences and the Hotel.

D. Licensee, or an Affiliate of Licensee, will manage the Condominium under a separate agreement with the Condominium Association (as defined in Section 1.1 hereof). It is currently contemplated that Millennium Partners BPC Management LLC, an Affiliate (as defined in Section 1.1 hereof) of Licensee, will manage the Condominium.

E. Licensor has subcontracted with Millennium Partners BPC Management LLC to manage certain aspects of the Condominium under that certain Condominium Submanagement Agreement ("Condominium Submanagement Agreement") dated the date hereof.

F. Licensor desires to grant, and Licensee desires to obtain, a limited, nonexclusive and nontransferable license to use the RITZ-CARLTON Marks (as defined in Section 1.1 hereof) exclusively in the written materials which are used in connection with the initial sale of each of the Residences by Licensee, under the terms and conditions set forth herein.

G. This is the agreement that is referred to as the "Condominium License Agreement" in the Hotel Operating Agreement and the Pre-Commencement Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Licensee and Licensor covenant and agree as follows:

ARTICLE I
DEFINITIONS

1.1. Definitions

The following terms when used in this Agreement have the meanings set forth below. Any capitalized term which is not specifically defined in this Agreement shall have the meaning set forth in the Hotel Operating Agreement.

Affiliate means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, of the power to vote 50% or more of the voting stock of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise.

Agreement means this Agreement (including the exhibits, schedules and addenda hereto), as amended, restated or supplemented from time to time.

Allowable Transaction Costs means the following with respect to the sale of any Residence: (a) sales commissions, legal fees and title expenses, not to exceed, in the aggregate, eight and one-half percent (8.5%) of the aggregate gross sales price of such Residence, *plus* (b) the actual costs incurred by Licensee for transfer taxes and recordation costs with respect to the sale of such Residence. For purposes hereof, "Allowable Transaction Costs" may be calculated with respect to each Residence, or with respect to multiple Residences for any calculation

relating to multiple Residences, in which case all references to the term "Residence" in the previous sentence shall be deemed to be "Residences", provided, however, that in computing the Introduction Fee payable to Licensor as of the Final Installment Date pursuant to this Agreement, "Allowable Transaction Costs" shall be calculated with respect to all of the Residences, it being the intent of the parties that the 8.5% cap referred to in subparagraph (a) above is an aggregate cap for all of the Residences.

Approval, Approve, or Approved means prior written approval or consent, which consent shall not be unreasonably withheld, conditioned or delayed.

Building shall have the meaning set forth in the Recitals.

Commencement Date shall have the meaning set forth in the Hotel Operating Agreement.

Condominium shall have the meaning set forth in the Recitals.

Condominium Act means Article 9-B of the New York Real Property Law.

Condominium Association means the condominium association, board of managers or unit owners association or other legal entity formed pursuant to the Condominium Instruments to be the governing body of the Condominium.

Condominium Instruments means the condominium declaration, articles, by-laws, floor plans and other operating documents (but not including the condominium offering plan) under which the Condominium is organized and operated.

Condominium Submanagement Agreement shall have the meaning set forth in the Recitals.

Effective Date means the date of this Agreement as set forth in the introductory paragraph of this Agreement.

Estimated Gross Revenue shall have the meaning set forth in Section 5.1.D.

Expert means an independent nationally recognized consulting firm or individual who is qualified to resolve the issue in question, and who is appointed in each instance by agreement of the parties. In the event either party calls for an Expert determination pursuant to the terms hereof, the parties shall have ten (10) days from the date of such request to mutually agree on one (1) nationally recognized hospitality industry consulting firm or individual as the Expert and, if they fail to agree, each party shall have an additional ten (10) days to each select one (1) nationally recognized hospitality industry consulting firm or individual as the Expert and

within ten (10) days of such respective selections, the two (2) respective firms and/or individuals so selected by each of the parties hereto shall select another such nationally recognized consulting firm or individual to be the Expert. If either party hereto fails to make its respective selection of a firm or individual within the ten (10) day period provided for above, then the other party's selection shall be the Expert.

Final Installment Date means the earlier of the date that is (a) the date that Licensee has sold all Residences in the Condominium, or (b) the later of the date that is (i) the third (3rd) anniversary of the Commencement Date, or (ii) the third (3rd) anniversary of the date of settlement of the first Residence sold by Licensee.

First Notice shall have the meaning set forth in Section 8.4.A.

Guidelines shall have the meaning set forth in Section 3.1.B.

Hotel means The RITZ-CARLTON, DOWNTOWN NEW YORK. The Hotel is more particularly described in the Hotel Operating Agreement.

Hotel Operating Agreement shall have the meaning set forth in the Recitals.

Installments shall have the meaning set forth in Section 5.1.A.

Introduction Fee shall have the meaning set forth in Section 5.1.A.

Licensee means Millennium BPC Development LLC, and its permitted successors and assigns.

Licensor means The RITZ-CARLTON Hotel Company, L.L.C., and its permitted successors and assigns.

Mortgage means any first lien leasehold mortgage, deed of trust, or other similar security interest encumbering the Building that otherwise satisfies the requirements of Section 2.3(c) of the Hotel Operating Agreement.

Mortgagee means the holder of a Mortgage.

Person means an individual (and the heirs, executors, administrators, or other legal representatives of an individual), a partnership, a corporation, a government or any department or agency thereof, a trustee, a trust, and any unincorporated organization.

Pre-Commencement Agreement shall have the meaning set forth in the Recitals.

Residence means a residential condominium unit (and related common elements) located within the Building.

Residential Gross Revenue shall mean the aggregate gross sales price of each Residence, less Allowable Transaction Costs.

Retail Space shall have the meaning set forth in the Recitals.

RITZ-CARLTON Marks means those certain trademarks and service marks including the mark RITZ-CARLTON and the LION AND CROWN Logo, which are set forth on Exhibit A attached hereto and incorporated herein by reference.

RITZ-CARLTON Rights means all service marks, trademarks, trade names, insignias, logos, emblems, signs, indicia of origin and combinations thereof that are owned or used by Licensor or any of its Affiliates, or that by reason of extent of usage are associated with hotels or other facilities owned or operated by Licensor or any of its Affiliates, including but not limited to the RITZ-CARLTON Marks.

Second Notice shall have the meaning set forth in Section 8.4.A.

Term means the term of this Agreement as established under Section 6.1.

Unit Owner means the registered owner, whether one or more Persons, of a Residence, but excluding those having such interests merely as security for the performance of an obligation.

1.2. Interpretation

A. Unless otherwise stated, references to the Preamble, Articles, Sections, Exhibits, Schedules and Addenda are to the Preamble, Articles, Sections, Exhibits, Schedules and Addenda of or to this Agreement, and all such Exhibits, Schedules and Addenda are hereby incorporated herein by reference.

B. Words indicating the singular include the plural and vice versa, as the context requires. Words indicating a gender include every gender, as the context requires.

C. References to days, months, and years are to calendar days, calendar months, and calendar years, respectively.

D. The headings to the Articles and Sections are for convenience only and have no legal effect.

E. The words "include," "included" and "including" shall be terms of enlargement or example and shall not imply any restriction or limitation unless the context clearly requires otherwise.

F. The word "or" shall not indicate exclusivity and shall be interpreted to mean both "and" and "or" unless the context clearly requires otherwise.

ARTICLE II
LICENSE

2.1. Grant of License.

A. Licensor hereby grants to Licensee a limited non-exclusive, non-transferable license within the United States to use the RITZ-CARLTON Marks in the written materials which are used in connection with the sale of Residences in the Condominium; provided, however, that Licensee may not use the RITZ-CARLTON Marks in any such written materials unless Licensee has complied with the provisions of Article III of this Agreement.

B. Except as specifically set forth in Section 9.1 hereof, Licensee shall have no right to assign or transfer any rights to which it may be entitled under this Agreement.

C. None of the Condominium Instruments which are to be recorded in the land records shall contain the name "Ritz-Carlton" or any other of the RITZ-CARLTON Marks unless same are approved in Licensor's sole discretion.

D. It is understood that in no event will employees of Licensee, nor brokers retained by Licensee in connection with the sale of the Residences, identify themselves as employees of, or as representing or speaking on behalf of, Licensor.

E All use of the RITZ-CARLTON Marks by Licensee under this Agreement shall inure to the benefit of Licensor and its Affiliates. Subject to Section 13.28 of the Hotel Operating Agreement, Licensor reserves the right to use and grant to others the right to use all or part of the RITZ-CARLTON Marks, as may be applicable, in connection with other hotels, condominiums, developments or other types of goods and services offered by Licensor, any of its Affiliates or others within the United States and elsewhere.

F. Nothing herein shall be construed to grant Licensee any right whatsoever to license or sublicense other Persons to use any of the RITZ-CARLTON Rights or the RITZ-CARLTON Marks.

G. Nothing herein shall be construed to grant Licensee any right whatsoever to use any of the RITZ-CARLTON Rights other than the RITZ-CARLTON Marks.

ARTICLE III
STANDARDS

3.1. Quality Control.

A. Licensee shall submit all proposed written materials bearing the RITZ-CARLTON Marks to Licensor for Approval prior to dissemination. Within fifteen (15) days after receipt of each such submission, Licensor shall notify Licensee in writing of the Approval or of any objections to materials bearing the RITZ-CARLTON Marks. If Licensor fails to respond within fifteen (15) days after receipt of any such submission, Licensee shall resubmit such submission to Licensor with a notice that such resubmission is a second submission and that Licensor's failure to respond within ten (10) days shall be deemed Approval. Within ten (10) days after receipt of any such resubmission, Licensor shall notify Licensee in writing of the Approval or of any objections to materials bearing the RITZ-CARLTON Marks, and in the event Licensor fails to respond within ten (10) days after receipt of any such resubmission, such resubmission shall be deemed Approved. Licensee agrees that it will not use any materials that have not been Approved by Licensor.

B. Licensee and Licensor agree that within one hundred twenty (120) days after the Effective Date, Licensor shall provide technical standards, specifications and guidelines (collectively, the "Guidelines") to Licensee for the use of the RITZ-CARLTON Marks. Licensee shall strictly comply with all Guidelines established by Licensor for the use of the RITZ-CARLTON Marks. Licensee understands that Licensor has the right to make amendments or revisions to the Guidelines from time to time, provided that any such amendments or revisions of the Guidelines are implemented generally throughout the hotels in the United States which are operated under the RITZ-CARLTON Rights. Licensor shall promptly furnish Licensee with copies of any such amendments or revisions. If implementing any such amendment or revision of the Guidelines imposes costs upon Licensee which would not have been imposed absent such amendments or revisions, Licensor agrees to pay such costs to the extent they are reasonable.

C. Licensee shall, at all times during the Term, conduct the sales and marketing activities which are described in this Agreement in a high-quality, professional and courteous manner so as not to dilute or damage the image and reputation of high-quality service symbolized by the RITZ-CARLTON Marks. Licensor shall have the right to monitor the quality standards of all sales and marketing activity in connection with which the RITZ-CARLTON Marks are being used. Licensee shall immediately cease any sales or marketing activity which Licensor determines (by written notice to Licensee) to be not representative of the high-quality service symbolized by the RITZ-CARLTON Marks. Any dispute as to such a determination by Licensor may be submitted by either party for resolution by an Expert pursuant to Section 10.10.

3.2 Standard of Quality of the Residences. Licensee agrees that the Residences shall be designed and constructed in accordance with the provisions of the Pre-Commencement Agreement applicable to the Residences.

ARTICLE IV
MARKETING ASSISTANCE; OWNERSHIP

4.1. Marketing Assistance. During the Term, Licensor will provide marketing assistance to, and cooperate with, Licensee in connection with the sales of Residences, including providing database and other customer information (subject to the requirement that neither Licensor nor any of its Affiliates will be required to act in a manner that might reasonably result in liability as a broker, as a declarant or as a sponsor). Reasonable criteria will be used to select names from such database. Licensee hereby agrees to keep all such information strictly confidential.

4.2. Ownership of RITZ-CARLTON Rights.

A. Licensee recognizes that Licensor and its Affiliates are the sole and exclusive owners of all rights, title and interest of every kind and nature, whether by statute or common law, in law or equity, which attach, inhere, subsist or exist in the RITZ-CARLTON Rights, including specifically the RITZ-CARLTON Marks and all goodwill associated with the RITZ-CARLTON Rights.

B. Licensee agrees that it will not during the Term or thereafter: (a) contest the ownership rights or any other rights of Licensor or its Affiliates in and to the RITZ-CARLTON Rights, contest the validity of the RITZ-CARLTON Rights or do anything which might impair, jeopardize, violate, infringe or dilute the RITZ-CARLTON Rights; (b) claim adversely to Licensor its Affiliates or anyone claiming through Licensor any right, title, or interest in and to the RITZ-CARLTON Rights; (c) use the RITZ-CARLTON Marks other than in the manner provided for in this Agreement and in the Hotel Operating Agreement, or bring into dispute the RITZ-CARLTON Rights; (d) register or apply to register in any country of the world the RITZ-CARLTON Rights or any other mark which is, in Licensor's reasonable opinion, the same as or confusingly similar to the RITZ-CARLTON Rights for Licensee's benefit, directly or indirectly; or (e) use any other mark which in Licensor's reasonable opinion is confusingly similar to the RITZ-CARLTON Rights.

C. Licensee further agrees to cooperate fully and in good faith with Licensor (at Licensor's expense) for the purpose of securing and preserving the rights of Licensor and its Affiliates in and to the RITZ-CARLTON Marks and to provide such consents, cooperation, and

other assistance (at Licensor's expense) as Licensor may reasonably request to perfect, defend, and protect Licensor's and its Affiliates' ownership of the RITZ-CARLTON Marks.

D. Licensee shall promptly notify Licensor in writing of any objection to the use of the RITZ-CARLTON Marks or any unauthorized use or attempted use (of which Licensee has actual knowledge), by any other person, firm or corporation, of the RITZ-CARLTON Marks or any variations similar thereto. In the event Licensor undertakes the prosecution of any litigation relating to the RITZ-CARLTON Marks, Licensee shall execute any and all documents and do such acts and things (at Licensor's expense) as, in the opinion of counsel for Licensor, may be necessary to carry out such defense or prosecution.

4.3. Condominium Association, Unit Owners.

A. Neither the Condominium Association nor any Unit Owner shall have any right to use any of the RITZ-CARLTON Rights pursuant to this Agreement.

B. Licensee hereby agrees to include the following provisions (i) in the condominium offering plan or prospectus, and in other explanatory written materials used in connection with the sale of Residences, and (ii) to the extent appropriate, in all contracts with Unit Owners for the sale of Residences:

1. An acknowledgment by the Unit Owner that (i) the Residence is being sold by Licensee and not Licensor, (ii) Licensor is not part of or an agent for the developer, sponsor or declarant of the Condominium, and has not acted as a broker, finder or agent in connection with the sale of the Unit, and (iii) such Unit Owner waives and releases Licensor from and against any liability with respect to any representations or defects, or any other claim whatsoever, relating to the marketing, sale or construction of the Unit, the Residences or the Building.

2. An acknowledgment by the Unit Owner that, in the event that either the Condominium Submanagement Agreement or the Hotel Operating Agreement is terminated for any reason (other than a "for cause" termination as described in Section 7.1.A hereof, in which event permitted use may continue for a limited period of time as provided in Section 7.1.A.), all use of the RITZ-CARLTON Marks shall cease at the Residences, and all indicia of connection of the Residences with The RITZ-CARLTON Hotel Company, L.L.C., including all signs or other materials bearing any of the RITZ-CARLTON Marks, shall be removed from the Residences portion of the Building.

ARTICLE V
PAYMENTS

5.1. Introduction Fee

A. Licensee shall pay to Licensor an amount (the "Introduction Fee") equal to ten percent (10%) of the amount by which the aggregate Residential Gross Revenue received by Licensee (or one of its Affiliates) in connection with the initial sale of the Residences by Licensee exceeds the product of (x) Six Hundred Twenty Five Dollars ($625) times (y) the aggregate number of square feet in the Residences which have been sold. The Introduction Fee shall be payable in quarterly installments (the "Installments"), commencing with the first day of the first calendar quarter which commences after the first closing of a sale of a Residence, and continuing each quarter thereafter until the Final Installment Date, as more particularly described in this Article V.

B. Licensee shall deduct from each Installment payable to Licensor (and the calculation of the aggregate Installments shall also reflect) a five percent (5%) "retainage," the effect being that Licensee shall actually pay to Licensor ninety-five percent (95%) of the amounts due pursuant to the calculation provided in Subsection A above, and shall hold back five percent (5%) of the actual Installments due, pending the final accounting of amounts owed to Licensee, as provided under Subsection D below.

C. The first Installment of the Introduction Fee shall be based upon all sales within the calendar quarter preceding the date that the first Installment is due. Each subsequent Installment shall reconcile the amount of all prior Installments to the Introduction Fee payable with respect to the aggregate Residential Gross Revenue for all Residences sold up to the date of such Installment. Simultaneously with the payment of each Installment, Licensee shall submit a sales report to Licensor showing the sales of Residences which were closed during the previous calendar quarter, the price per square foot of each Residence sold, the Introduction Fee, if any, payable with respect to such Residences, and the reconciliation with all prior Installments paid on account of the Introduction Fee.

D. The aggregate Introduction Fee payable to Licensor will be determined as of the Final Installment Date, and the balance of the Introduction Fee (net of previous payments actually made to Licensor) will be payable thirty (30) days after the Final Installment Date. In the event the Installments actually paid to Licensor on account of the Introduction Fee prior to the Final Installment Date exceed the aggregate Introduction Fee calculated as of the Final Installment Date, such excess shall be refunded to Licensee within thirty (30) days after the Final Installment Date. The aggregate Introduction Fee payable to Licensor by Licensee as of the Final Installment Date shall be in an amount equal to ten percent (10%) of the amount by which the sum total of (a) the aggregate actual Residential Gross Revenue generated from all Residences which have been sold through the Final Installment Date, plus (b) in the event any

Residences remain unsold on the Final Installment Date, the Estimated Gross Revenue with respect to all such unsold Residences, exceeds the product of (x) Six Hundred Dollars ($625) times (y) the aggregate number of square feet in all of the Residences (both sold and unsold). As used herein, the term "Estimated Gross Revenue" shall mean ninety percent (90%) of the aggregate of the then-current asking prices for all unsold Residences, less a reasonable estimate of the Allowable Transaction Costs which would be incurred if such Residences were sold. In the event that one or more of the Residences have not been sold as of the Final Installment Date and are no longer being held for sale, the "Estimated Gross Revenue" pertaining to those Residences shall be the appraised value of such Residences, as determined by a licensed appraiser reasonably satisfactory to both Licensee and Licensor, less a reasonable estimate of the Allowable Transaction Costs which would have been incurred if such Residences were sold.

E. To illustrate the calculation of the Introduction Fee, assume that prior to the Final Installment Date, One Hundred (100) Residences containing One Hundred Thousand (100,000) square feet were sold for a total Residential Gross Revenue of Seventy Million Dollars ($70,000,000) (an average Residential Gross Revenue of $700 per square foot) and Fifty (50) Residences containing Seventy Five Thousand (75,000) square feet remain unsold at the end of such period, with ninety percent (90%) of the then asking prices of such unsold Residences (net of a reasonable estimate of the Allowable Transaction Costs which would have been incurred if they had been sold) totaling Fifty Million Dollars ($50,000,000). Further assume that Licensee has previously paid to Licensor all of the Installments (less 5% retainage) on the Residences that were sold, equal to $712,500 (.95 x (($700-$625) x .10 x 100,000)). The average Residential Gross Revenues for the sold and unsold Residences would be approximately Six Hundred Eighty Five and 71/100 Dollars ($685.71) per square foot (($50,000,000 + $70,000,000)/175,000), and the aggregate Introduction Fee would be $1,062,425 (.10 x ($685.71-$625) x 175,000 square feet). The amount payable to Licensor, as of thirty (30) days after the Final Installment Date, would be $349,925 ($1,062,425-$712,500).

F. Licensee's obligations under this Section 5.1 shall continue to be Licensee's obligations after (and notwithstanding the fact that) control of the Condominium shall have become vested in the Condominium Association.

ARTICLE VI
TERM

6.1 Term

The term ("Term") of this Agreement shall commence on the Effective Date and shall continue thereafter until all the Residences have been sold by Licensee, but in no event later than September 1, 2011.

ARTICLE VII
TERMINATION OR EXPIRATION

7.1. Termination.

A. If the Hotel Operating Agreement or the Condominium Submanagement Agreement is terminated, this Agreement shall be immediately and automatically terminated. Notwithstanding the foregoing, if the Hotel Operating Agreement or the Condominium Submanagement Agreement is terminated "for cause" based upon an Event of Default by Licensor (or one of its Affiliates), the basis of which is fraud, gross negligence, willful misconduct or a crime of moral turpitude concerning Licensor or such Affiliate in the performance of its duties under the Hotel Operating Agreement or the Condominium Submanagement Agreement (and Licensor or such Affiliate shall have failed to cure such Event of Default within the applicable cure period), Licensee will have the option to either: (i) terminate this Agreement; or (ii) continue this Agreement in full force and effect, notwithstanding the termination of the Hotel Operating Agreement or the Condominium Submanagement Agreement, and the right to continue to use the Ritz-Carlton Marks in accordance with this Agreement, for a period of time which shall end on the fifth (5th) anniversary of the Commencement Date.

B. Upon expiration or termination of the Term, Licensee shall cease immediately without the need for any further action by Licensor any use of the RITZ-CARLTON Marks. Licensee shall thereupon remove from any materials any reference to the RITZ-CARLTON Marks and forward to Licensor any unused materials which contain any reference to the RITZ-CARLTON Marks. Licensor shall have the right to seek injunctive or other relief in a court of competent jurisdiction to enforce the foregoing provisions, and if such enforcement shall be necessary, the Licensee shall bear all of Licensor's costs, including reasonable attorneys' fees, of such enforcement.

C. Either party will have the right to terminate this Agreement pursuant to Section 8.2.

ARTICLE VIII
EVENTS OF DEFAULT

8.1. Events of Default.

Each of the following shall constitute an event of default ("Event of Default") to the extent permitted by applicable law:

A. The filing of a voluntary petition under any bankruptcy, insolvency or similar law or a petition for reorganization under any bankruptcy, insolvency or similar law by either party, the admission by either party that it is unable to pay its debts as they become due or the consent by either party to an involuntary petition under any bankruptcy, insolvency or similar law;

B. The entering of an order, judgment, or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating either party as bankrupt, insolvent or similar status or approving a petition seeking reorganization or appointing a receiver, trustee, judicial manager, or liquidator of all or a substantial part of either party's assets, provided that same is not dismissed within sixty (60) days;

C. The failure of either party to make any payment required to be made pursuant to this Agreement, if such failure is not cured within ten (10) days after written notice specifying such failure is received by the defaulting party from the non-defaulting party; or

D. The failure of either party to perform, keep, or fulfill any of the other material warranties, covenants, undertakings, or obligations set forth in this Agreement or the Pre-Commencement Agreement (with respect to those obligations of Licensee under the Pre-Commencement Agreement relating to design and construction of the Residences), if such failure is not cured within thirty (30) days (or such other time as may be provided in the Pre-Commencement Agreement with respect to the obligations of Licensee under the Pre-Commencement Agreement relating to design and construction of the Residences) after written notice specifying such failure is received by the defaulting party from the non-defaulting party.

8.2 Right of Termination

A. Upon the occurrence of an Event of Default, and upon thirty (30) days' prior written notice to the defaulting party (unless such Event of Default involves any of the actions described in Section 8.1.C, in which case only five (5) days' prior written notice to the defaulting party shall be necessary), the non-defaulting party shall have the right to terminate this Agreement.

B. Termination of this Agreement for any reason shall not affect (1) obligations, including the payment of any Introduction Fee, which has accrued as of the date of termination; and (2) those obligations which, from the context hereof, are intended to survive termination of this Agreement. Without limiting the foregoing, the provisions of Section 4.2.B and Section 7.1.B shall survive the termination of this Agreement. In the event of termination of this Agreement prior to the Final Installment Date, Licensee shall not be obligated to pay Introduction Fees with respect to Residences sold after the date of termination, but shall be obligated to pay Introduction Fees (and all retainage held with respect thereto) for all Residences sold prior to the date of termination. However, the foregoing shall not be construed to limit any

damages which Licensor may assert against Licensee in the event this Agreement is terminated as a result of an Event of Default caused by Licensee.

8.3 Other Remedies

Unless otherwise provided herein, no right or remedy conferred upon or reserved to a non-defaulting party by this Agreement is intended to be or shall be deemed to be exclusive of any other right or remedy herein or by law or equity provided or permitted, but each such right or remedy shall be in addition to every other right or remedy. Nothing herein contained shall bar either party's right to obtain injunctive relief under applicable equity rules (including the applicable rules for obtaining restraining orders and preliminary injunctions) against threatened conduct which may cause it to incur loss or damages.

8.4 Mortgagee Protection

A. In the event of (i) an Event of Default by Licensee in the performance or observance of any of the terms and conditions of this Agreement, or (ii) any other occurrence which entitles Licensor to terminate this Agreement, and in the event that Licensor gives written notice thereof to Licensee pursuant to Section 10.6 of this Agreement, or any applicable other provisions of this Agreement, Licensor shall also give a duplicate copy (herein referred to as the "First Notice") of such notice to the Mortgagee, at the address previously provided to Licensor by such Mortgagee. Any such notice will be sent in the manner described in Section 10.6 hereof. Mortgagee shall have the right, but not the obligation, to cure any Event of Default, or any other occurrence which entitles Licensor to terminate this Agreement, and shall be granted (i) provided that the Event of Default does not relate to the use or misuse of the Ritz-Carlton Marks or Ritz-Carlton Rights, an extra thirty (30) days in which to effectuate such cure, plus such longer period of time as may be necessary, provided that Mortgagee is diligently pursuing such cure to completion, or (ii) if the Event of Default relates to the use or misuse of the Ritz-Carlton Marks or Ritz-Carlton Rights, an extra ten (10) days in which to effectuate such cure. In the event that such Event of Default or any other occurrence entitling Licensor to terminate this Agreement, is not cured within such applicable cure period and Licensor intends to exercise its remedy of terminating this Agreement, and provided that the Event of Default does not relate to the use or misuse of the Ritz-Carlton Marks or Ritz-Carlton Rights, Licensor shall send a second notice (the "Second Notice") to such first Mortgagee, to the same address and in the same manner applicable to the First Notice, stating Licensor's intention to terminate this Agreement. Licensor shall forbear from taking any action to terminate this Agreement for a period of thirty (30) days after the service of the Second Notice (if such Second Notice is required, as set forth above). It is understood that any failure by Licensor to give such a duplicate notice (either the First Notice or the Second Notice, as the case may be) to any Mortgagee shall not itself be an Event of Default by Licensor under this Agreement, but rather shall operate only to void the effectiveness of any such notice by Licensor to Licensee under Section 10.6 of this Agreement, until such First Notice or Second Notice (as the case may be) has been properly sent to such Mortgagee. Except as

specifically limited by this Section 8.4, nothing herein shall preclude Licensor from exercising any of its rights or remedies against Licensee with respect to any Event of Default by Licensee under this Agreement.

B. Upon the request of a proposed Mortgagee, at any time during the Term, Licensor will enter into an appropriate amendment of this Agreement, or a separate agreement, setting forth customary lender-protection provisions; provided that no such amendment or separate agreement will either: (i) alter any of the provisions of this Agreement relating to Licensor's compensation hereunder; (ii) materially and adversely to Licensor, alter any other substantive provision of this Agreement; or (iii) allow any use of the RITZ-CARLTON Marks or the RITZ-CARLTON Rights except as expressly permitted hereunder.

ARTICLE IX
ASSIGNMENT

9.1 Assignment.

Licensee may assign this Agreement to any party that is a permitted assignee of Licensee's rights under the Hotel Operating Agreement. Licensor may assign this Agreement to any party that is a permitted assignee of Licensor's rights under the Hotel Operating Agreement. Any other assignment by either party shall require the prior written approval of the other party.

ARTICLE X
MISCELLANEOUS

10.1 Right to Make Agreement

Each party represents, warrants and covenants, with respect to itself, that neither its execution of this Agreement nor the performance of its obligations hereunder: (i) violates any provision of law or any judgment, writ, injunction, order, or decree of any court or governmental authority having jurisdiction over it or any of its Affiliates; (ii) results in or constitutes a material breach or material default under any indenture, contract, commitment, or restriction to which it or any of its Affiliates is a party or by which it or any of its Affiliates is bound; or (iii) requires any consent, vote, or approval which has not been given or taken, or at the time of the transaction involved shall not have been given or taken. Each party represents and warrants that it has the full right and authority to enter into this Agreement. Each party represents and warrants that it and its Affiliates have and covenants that it and its Affiliates shall continue to have through the Term the full right and authority to perform its obligations hereunder.

10.2 Indemnification

A. Licensee agrees that it shall defend, indemnify and hold harmless Licensor from and against any and all costs, damages, liabilities and expenses (including reasonable attorneys' fees) arising from: (i) any claim by any Unit Owner stemming from the purchase of a Residence from Licensee or one of its Affiliates; (ii) any claim by any Person stemming from any loss, damage or injury to any Person or to property which was allegedly caused by the action or inaction of any employee of Licensee or any of its Affiliates; or (iii) any contractual or other claim by any Person relating to Licensee's activities with respect to the Building and/or the Condominium.

B. Licensor agrees that it shall defend, indemnify and hold harmless Licensee against any and all costs, damages, liabilities and expenses (including reasonable attorneys' fees) arising from any claim that the Licensee's use of the RITZ-CARLTON Marks pursuant to this Agreement infringes on the trademark rights of any third-party; provided however, that Licensee gives immediate written notice of any such claim to Licensor, permits Licensor to have sole control over the defense and settlement of the claim, and cooperates fully with Licensor in defending or settling the claim. Notwithstanding the foregoing, Licensor will not be obligated to indemnify or defend Licensee if the claim is based on a use of the RITZ-CARLTON Marks not authorized by this Agreement. In addition, Licensor agrees that it shall defend, indemnify and hold harmless Licensee from and against any and all costs, damages, liabilities and expenses (including reasonable attorneys' fees) arising from: (i) any claim by any Person stemming from any loss, damage or injury to any Person or to property which was allegedly caused by the action or inaction of any employee of Licensor or any of its Affiliates; or (ii) any contractual or other claim by any Person relating to Licensor's activities with respect to the Building and/or the Condominium.

C. The provisions of this Section 10.2 shall survive termination of this Agreement.

10.3 No Warranties

Except as specifically provided in this Agreement, neither party makes any representation, warranty, or guarantee, and neither party assumes any liability or obligation to the other by providing (or denying) any waiver, approval, consent, agreement, or suggestion to the other in connection with this Agreement.

10.4 Relationship

The relationship of Licensee and Licensor shall be that of licensee and licensor, and nothing contained in this Agreement shall be construed to create an agency, partnership or joint venture between them or their successors in interest. Notwithstanding the license relationship created by this Agreement, nothing contained herein shall prohibit, limit, or restrict Licensor or

any of its Affiliates from licensing the RITZ-CARLTON Marks to any other party, subject to Section 13.28 of the Hotel Operating Agreement.

10.5 Applicable Law and Jurisdiction

This Agreement is executed pursuant to, and shall be construed under and governed exclusively by, the laws of the State of New York.

10.6 Notices

Any notice, statement or demand required to be given under this Agreement shall be in writing and be, and at the option of the party giving notice, (i) personally delivered, or (ii) transmitted by postage prepaid first class mail, or by facsimile machine or by a recognized overnight delivery service, addressed:

If to Licensee:
Chief Financial Officer
Millennium BPC Development LLC
1995 Broadway, 3rd Floor
New York, New York 10023

With copy to:
Eric Landau, Esquire
Battle Fowler, L.L.P.
75 East 55th Street
New York, New York 10022

If to Licensor:
The Ritz-Carlton Hotel Company, L.L.C.
3414 Peachtree Road, N.E., Suite 300
Atlanta, Georgia 30326
Attention: General Counsel

and

Marriott International, Inc.
Dept. 52/923
10400 Fernwood Road
Bethesda, MD 20817
Attn: Senior Operations Attorney

and

General Manager of the Hotel

With a copy to: such other addresses as Licensee or Licensor shall designate in the manner herein provided.

Any such notice shall be deemed to have been given on (x) the date of receipt if delivered personally, or if sent by facsimile machine or by a recognized overnight delivery service, or (y) the day five (5) days after it shall have been posted if transmitted by mail, whichever shall first occur, but the time period for any response thereto or action in connection therewith shall not commence to run until actual receipt or rejection or inability to deliver such notice. Licensee and Licensor each agree that upon giving of any notice, it shall use its best efforts to advise the other by telephone that a notice has been sent hereunder. Such telephonic advice shall not, however, be a condition to the effectiveness of notice hereunder.

10.7 Brokerage

Each of the parties hereby represents and warrants to the other that it has not engaged any broker, consultant or similar Person in connection with the subject matter of this Agreement. Each party shall indemnify, defend, and hold harmless the other party from and against all damages based on or arising from any third party claim based on an alleged brokerage, consultancy or similar engagement by the indemnifying party or by any of its Affiliates. Any payment from a party to a broker, consultant, or similar Person shall be borne exclusively by such party. Licensor shall have no liability or obligation with respect to any brokerage commissions relating to the sale of the Residences and Licensee agrees to indemnify, defend, and hold Licensor harmless from and against any and all damages and expenses (including reasonable attorneys' fees and expenses) based on or arising from any claim for commissions relating to the sale of the Residences.

10.8 Waiver

The failure or delay by a party to insist upon strict performance of any provision of this Agreement or to exercise any option, right, or remedy contained in this Agreement shall not constitute a waiver or a relinquishment of such provision, option, right, or remedy for the future. No waiver by a party of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such party.

10.9 Partial Invalidity

The provisions of this Agreement shall be deemed independent and severable. If any provision of this Agreement or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby (provided that each party shall still receive substantially all the benefits which such party reasonably contemplated receiving under this

Agreement), and each provision shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provision shall be replaced with a provision which is valid and enforceable and most nearly reflects the original intent of the invalid or unenforceable provision.

10.10 Expert Decisions. Where a matter is referred to an Expert for determination, the following provisions shall apply to such Expert's determination:

(a) The decision of the Expert shall be final and binding on the parties and shall not be capable of challenge, whether by arbitration, in court or otherwise.

(b) Each party shall be entitled to make written submissions to the Expert, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission. The parties shall make available to the Expert all books and records relating to the issue in dispute and shall render to the Expert any assistance requested of the parties. The costs of the Expert and the proceedings shall be borne as directed by the Expert unless otherwise provided for herein.

(c) The terms of engagement of the Expert shall include an obligation on the part of the Expert to:

(i) notify the parties in writing of his decision within thirty (30) days after the date on which the Expert has received all submissions which the Expert has requested of either of the parties (or such other period as the parties may agree or as set forth herein);

(ii) apply the standards applicable to luxury class hotels in accordance with the RITZ-CARLTON Standards; and

(iii) establish a timetable for the making of submissions and replies.

10.11 Entire Agreement

This constitutes the entire agreement between the parties or their respective Affiliates, supersede all prior understandings and writings, and may be changed only by a writing signed by the parties or their respective Affiliates.

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IN WITNESS WHEREOF, Licensor and Licensee, acting by and through their proper and duly authorized directors, partners, officers or other representatives, have each duly executed this Agreement as of the Effective Date.

LICENSOR:

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,
a Delaware limited liability company

By: _____
Name: Kevin M. Kimball
Title: Vice President

LICENSEE:

MILLENNIUM BPC DEVELOPMENT, LLC
By: Millennium Partners LLC, its sole member
By: Millennium Partners Management, LLC
By: Millennium Manager I, Inc.

By: _____
Name: Brian Collins
Title: Vice President

EXHIBIT A



THE RITZ-CARLTON®

REGISTERED TRADEMARKS OF RITZ-CARLTON HOTEL COMPANY, L.L.C.

TRADEMARK	REG. NO.
RITZ (stylized)	1,535,834
RITZ-CARLTON	1,094,823
THE RITZ-CARLTON CLUB	1,631,978
THE RITZ-CARLTON ORCHESTRA	1,756,567
PUTTIN' ON THE RITZ	1,590,786
THE RITZ KIDS	1,795,438
LION & CROWN DESIGN	1,749,744
A LA RITZ	1,577,684
RITZ-CARLTON & DESIGN	1,905,234

MILLENNIUM PARTNERS BPC MANAGEMENT LLC
1995 Broadway, Third Floor
New York, New York 10023

August 31, 1999

The Ritz-Carlton Hotel Company, L.L.C.
3414 Peachtree Road, N.E.
Suite 300
Atlanta, Georgia 30326

Attention: Mr. Phil Keb

Re: Mixed Use Condominium to be constructed at Battery Park City, Site #1, New York, New York ("Condominium")

Ladies and Gentlemen:

Reference is made to that certain Condominium Management Agreement (the "Management Agreement") to be entered into by us (or our affiliate; such party referred to herein as "Millennium") and the board or other legal entity formed to be the governing body of the Condominium) pursuant to which Millennium will manage the Condominium. Reference is also made to that certain Condominium Submanagement Agreement (the "Submanagement Agreement") by and between Millennium and you (hereinafter referred to as "RC"), dated as of the date hereof pursuant to which Millennium has subcontracted with RC to perform certain management responsibilities with respect to the Condominium.

The undersigned hereby acknowledge that as of the date hereof, (i) the Management Agreement has not yet been finalized, (ii) the condominium documents (the "Condominium Documents") with respect to the Condominium have not yet been finalized and approved by the Attorney General of the State of New York (the "AG"), and (ii) the developer of the Condominium (the "Developer") (which is an affiliate of Millennium) has not yet secured the necessary financing (the "Financing") for the Condominium.

To that end, RC and Millennium hereby agree as follows:

1. Upon the request of Millennium, at any time before the later of (i) the approval of the Condominium Documents by the AG and (ii) the closing of the Financing, RC will agree to appropriate amendments of the Submanagement Agreement, or to enter into separate agreements, setting

forth such changes as may be required by the AG and/or requested by the lender of the Financing (the "Lender"); provided, however, that with respect to any changes requested by the Lender, no such amendment or separate agreement shall either (1) alter any of the provisions of the Submanagment Agreement relating to RC's compensation thereunder; or (2) materially and adversely to RC, alter any other substantive provision of the Submanagement Agreement, including any provision relating to the use of the Ritz-Carlton Marks (as defined in the Submanagement Agreement);

2. RC shall have the right to review and approve the Management Agreement and any amendments thereto, which approval shall not be unreasonably withheld or delayed; and

3. Millennium shall ensure that Developer will consult with RC during the design review phase (as more particularly described in that certain Pre-Commencement Agreement by and between Developer and RC dated as of the date hereof) with respect to the provision of a reasonable amount of space on each floor of the Residential Section (as defined in the Submanagement Agreement) of the Condominium to facilitate the delivery of the Hotel Concierge Services (as defined in the Submanagement Agreement).

If the foregoing is consistent with your understanding, please indicate your assent thereto by signing this letter where indicated below and returning to us a copy of this letter.

Sincerely yours,

MILLENNIUM PARTNERS BPC MANAGEMENT LLC

By: MILLENNIUM PARTNERS MANAGEMENT LLC

By: Millennium Manager I, Inc.

By: _____
Name: Brian Collins
Title: Vice President

AGREED AND ACCEPTED
this 31st day of August, 1999

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

By: _____
Name: Kevin M. Kimball
Title: Vice President

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Attached hereto are the following forms of Agreements:

1) Exhibit E-1: Construction Mortgage Subordination and Recognition Agreement to be executed by the construction lender who has agreed to release the Hotel Unit from the lien of its mortgage upon the Condominium Date.

2) Exhibit E-2: Mortgage Subordination and Recognition Agreement to be executed by a lender who, after the Condominium Date, has a lien on the Hotel Unit Sublessee's interest under the Hotel Unit Sublease.

NOTE: Any other permitted Mortgagee (other than a Residential Unit Mortgagee) shall execute a Subordination and Recognition Agreement containing the substantive provisions of Exhibits E-1 and E-2, as applicable, and otherwise be in form and substance satisfactory to Landlord.

EXHIBIT E-1

CONSTRUCTION MORTGAGE SUBORDINATION AND RECOGNITION AGREEMENT

THIS CONSTRUCTION MORTGAGE SUBORDINATION AND RECOGNITION AGREEMENT (this "Agreement"), made as of this ____ day of ____, ___, among BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281 (together with its successors and assigns, "Landlord"); MILLENNIUM BPC DEVELOPMENT LLC, a New York limited liability company having an office at c/o Millennium Partners, 1995 Broadway, New York, New York 10023 (together with its successors and assigns, "Tenant"); and [MORTGAGEE], a _____, having an office at _____ (together with its successors and assigns, "Mortgagee").

WITNESSETH:

WHEREAS, pursuant to that certain Ground Lease dated as of January 1, 2000 between Landlord and Tenant (such lease, as the same may be assigned, amended or restated from time to time, the "Ground Lease"), Tenant is the tenant of a leasehold estate of certain real property known as Site 1 located in Battery Park City, New York, New York, more particularly described on Schedule A attached hereto and made a part hereof (the "Land"), upon which Tenant intends to construct a building and related improvements (the "Development") containing, among other things, a hotel known as "the Ritz-Carlton, Downtown New York" and residential apartments (Tenant's leasehold interest in the Land and the Development are collectively referred to herein as the "Premises");

WHEREAS, in connection with the execution of the Ground Lease, Tenant has requested and Landlord has agreed that Tenant be permitted, subject to the terms and provisions of Article 43 of the Ground Lease, to submit its leasehold interest in the Premises under the Ground Lease to the condominium form of ownership pursuant to the provisions of the Condominium Act, as more specifically provided in Article 43 of the Ground Lease;

WHEREAS, [Expand to accurately describe the Mortgage and Mortgage Loan Documents] Tenant and Mortgagee are entering into to that certain [Building Loan Agreement] dated as of _____, _____, pursuant to which Mortgagee has agreed to make the loan to Tenant in order to finance the construction of the Development, which loan is evidenced by a **[Note]** in the amount of **[$]** and secured by that certain [Building Loan Mortgage] dated as of _____ and recorded against Tenant's leasehold interest in the Premises under the Ground Lease (such [Mortgage], as the same may be amended, modified or supplemented in accordance with its terms from time to time, the "Mortgage" and the Mortgage, together with the aforesaid Building Loan Agreement, the Note and the other documents or instruments related thereto, the "Mortgage Loan Documents"); and

WHEREAS, under the terms of the Ground Lease, Mortgagee may not file any Mortgage against Tenant's leasehold estate in the Premises or be accorded the rights set forth in Article 10 of the Ground Lease with respect to any such Mortgage unless Landlord and Mortgagee enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth herein and for ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto agree as follows:

ARTICLE I

Provisions Applicable Prior to Condominium Date

1. Subordination. Tenant and Mortgagee hereby covenant and agree that the Mortgage, the lien thereof, and Mortgagee's rights thereunder, including, without limitation, Mortgagee's rights to institute foreclosure proceedings pursuant to the terms of the Mortgage, are, and shall at all times continue to be, subject to the terms of this Agreement and subject in each and every respect to the Ground Lease and subject and subordinate in each and every respect to the rights and interests of Landlord thereunder (including, without limitation, any Rent payable to Landlord thereunder), the Master Lease, the Title Matters and any other instruments senior to the Ground Lease. Tenant and Mortgagee, upon written request from Landlord, shall execute and deliver any further certificates, documents or other instruments or agreements which Landlord may reasonably request to confirm said subordination by Tenant and Mortgagee.

2. Recognition. Landlord hereby recognizes the Mortgagee as a "Mortgagee" for purposes of the Ground Lease, and recognizes the rights of Mortgagee, as the holder of the Mortgage which constitutes a lien against Tenant's interest in the Premises, including Mortgagee's right (a) to foreclose or otherwise enforce its lien against Tenant's leasehold estate in the Premises, or to acquire such interest by assignment in lieu of foreclosure, and (b) to transfer its interest therein as provided for in the agreements between Mortgagee and Tenant, subject to the terms and provisions the Ground Lease and Landlord's rights thereunder. Landlord further acknowledges and agrees that Mortgagee is hereby accorded all of the rights and privileges of a Mortgagee under the Ground Lease, including, without limitation, Sections 10.01(e), 10.10 and 10.11 of the Ground Lease.

3. Mortgagee's Right to Cure Defaults of Tenant under Ground Lease. Landlord shall give a duplicate copy of each and every notice of Default under the Ground Lease to Mortgagee at the same time as, and whenever, any such notice shall be given by Landlord to Tenant. No such notice of Default by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Mortgagee shall thereupon have the right to remedy such Default pursuant to the terms and provisions of Section 10.10 of the Ground Lease.

4. Modification of Ground Lease. Landlord hereby covenants and agrees that, pursuant to Section 10.10(c) of the Ground Lease, in the event Mortgagee becomes the owner of Tenant's leasehold estate in the Premises, Mortgagee shall not be bound by any

modification or amendment of the Ground Lease made (x) subsequent to the date of the Mortgage and delivery to Landlord of the notice provided in Section 10.10(a) of the Ground Lease and (y) prior to Mortgagee's acquisition of such interest, unless Mortgagee shall have consented to such modification or amendment at the time it was made or at the time of such acquisition.

ARTICLE II

Provisions Applicable Subsequent to Condominium Date

1. Effective Date. Upon the Condominium Date, the terms and provisions of Article I hereof shall be no further force and effect, and from and after the Condominium Date, the terms and provisions of this Article II shall govern.

2. Effect of the Condominium Date. Upon the Condominium Date (i) the lien of the Mortgage shall automatically be subject and subordinate to the Declaration, (ii) the Condominium Board's leasehold interest under the Ground Lease shall automatically be released from the lien, if any, of the Mortgage and such lien, if any, against the Condominium Board's interest shall be of no further force or effect, (iii) the Public Amenity Space Unit, the Hotel Unit and the Common Areas of the Condominium shall automatically be released from any lien of the Mortgage, and (iv) the lien of the Mortgage shall not attach to any interests of the Tenant or Declarant under the Ground Lease other than the Residential Units. The foregoing provisions shall be self operative and shall not require the filing of any further documents or instruments, provided that upon the request of Landlord, Mortgagee and Tenant shall execute such further certificates, documents and other instruments or agreements as may be reasonably necessary in order to effectuate or confirm the foregoing provisions.

3. Subordination. (a) Tenant and Mortgagee hereby covenant and agree that the Mortgage, the lien thereof and Mortgagee's rights thereunder, including, without limitation, Mortgagee's rights to institute foreclosure proceedings pursuant to the terms of the Mortgage, are, and shall at all times continue to be, subject to the terms of this Agreement and subject in each and every respect to the Ground Lease and subject and subordinate in each and every respect to the rights and interests of Landlord thereunder (including, without limitation, any Rent payable thereunder), the Master Lease, the Title Matters and any other instruments senior to the Ground Lease. Tenant and Mortgagee, upon written request from Landlord, shall execute and deliver any certificates, documents, or other instruments or agreements which Landlord may reasonably request to effectuate or confirm said subordination by Tenant and Mortgagee.

(b) To the extent that Section 339(z) of the Real Property Law has any application to any Residential Rent payable by the Residential Unit Owners, the Mortgagee and the Tenant, as the owner of the Residential Units upon the Condominium Date, hereby expressly and irrevocably waive for the benefit of Landlord and the Condominium Board any rights they may have under or pursuant to said Section 339(z).

4. Recognition. Landlord hereby recognizes the rights of Mortgagee (i) to foreclose or otherwise enforce its lien against Declarant's interest in the Residential Units, or any

Residential Unit, created pursuant to the Declaration or to acquire such interest by assignment in lieu of foreclosure, (ii) to transfer all or any portion of its interest therein as provided for in the agreements between Mortgagee and Tenant, subject to Landlord's rights under the Ground Lease; provided, however, that Mortgagee acknowledges and agrees that all Residential Rent shall be paid to Landlord before, and shall have a priority of lien over, any and all sums to be paid to Mortgagee pursuant to such foreclosure or assignment in lieu thereof. Mortgagee shall not, however, be deemed a "Mortgagee" for purposes of Section 10.11 of the Ground Lease or the Hotel Unit Sublease but Mortgagee shall have all of the other rights set forth in the Ground Lease applicable to the Construction Mortgagee.

5. Mortgagee's Right to Cure Defaults of Tenant under the Ground Lease. Landlord shall give a duplicate copy of each and every notice of Default under the Ground Lease to Mortgagee at the same time as, and whenever, any such notice shall be given by Landlord to Tenant pursuant to the Ground Lease. No such notice of Default by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Mortgagee. Mortgagee shall thereupon have the right to remedy such Default pursuant to the terms and provisions of the Ground Lease as if it were a "Mortgagee" for purposes of the Ground Lease.

ARTICLE III

Provisions Applicable Prior to and Subsequent to Condominium Date

1. Effectiveness. The provisions of this Article III and the provisions of Article IV shall apply at all times before and after the Condominium Date.

2. Transfers. Mortgagee agrees that, without the prior written consent of Landlord, Mortgagee shall not sell, assign, transfer or otherwise dispose of all or any part of its interest in the Mortgage, other than a sale, assignment, transfer or other disposition to an Institutional Lender in accordance with the terms of the Ground Lease, it being agreed and acknowledged that the foregoing shall not be deemed to restrict Mortgagee's rights under the Ground Lease to sell, transfer or assign its interest in the Ground Lease or any or all Residential Units, subject, however, to all of the applicable terms and provisions of the Ground Lease.

3. Documents; Amendments. Mortgagee shall deliver to Landlord, concurrently with the execution and delivery of this Agreement, a complete copy of all Mortgage Loan Documents, and, forthwith upon the execution and delivery of any amendments, supplements, modifications or waivers of any of the Mortgage Loan Documents, deliver to the Landlord copies thereof.

4. Reporting. Mortgagee hereby agrees that it shall simultaneously send to Landlord copies of all notices of default given or made by such party pursuant to the Mortgage. Any such notice, a counterpart or copy of which Mortgagee fails to deliver to Landlord as required hereby, shall not be effective vis-a-vis Tenant, until such notice is delivered to Landlord. Landlord shall have the right, but not the obligation, to cure any and all defaults of Tenant under the Mortgage, on the same terms as are applicable to Mortgagee's right to cure Defaults by Tenant pursuant to Section 10.10 of the Ground Lease.

5. Certification. Upon the request of Landlord, Mortgagee and/or Tenant shall deliver to Landlord a certificate, executed on behalf of Mortgagee or Tenant, respectively, stating that, to the best knowledge of such party, neither party is in default with respect to its obligations under the Mortgage, or any documents or agreements executed in connection therewith and that no condition exists which, with notice or lapse of time or both, would constitute a default under the Mortgage Loan Documents or any documents or agreements executed in connection therewith (or, if either party is in default or such a condition does exist, identifying such default and/or condition in detail), that the Mortgage Loan Documents are in full force and effect and such other matters as reasonably requested by Landlord.

6. Curing of Defaults. Mortgagee acknowledges and agrees that its right to assign its interest in foreclosure of the leasehold interest of Tenant under the Ground Lease is preconditioned on its curing all monetary defaults of Tenant existing thereunder at the time of foreclosure and Mortgagee undertaking to cure all non-monetary defaults of Tenant as described and set forth in Section 10.10 of the Ground Lease.

7. Estoppel. Mortgagee and Tenant hereby represent and warrant to Landlord as follows, with the understanding that Landlord is relying on the truth and accuracy of the representations and warranties set forth in this Section 7:

(a) The Mortgage and the other Mortgage Loan Documents are unmodified as of the date hereof and are in full force and effect and there are no other agreements between the Tenant and Mortgagee pertaining to the loan thereunder.

(b) Neither Mortgagee nor Tenant is aware of any default by the other party under the Mortgage or the Mortgage Loan Documents. As of the date of this Agreement, to Mortgagee's knowledge, Mortgagee has no accrued cause of action, claim or right of foreclosure under the Mortgage.

(c) Landlord has received a full and complete copy of all Mortgage Loan Documents.

8. Depository. Mortgagee is hereby appointed as Depository for all purposes of the Ground Lease. Mortgagee hereby accepts such appointment and agrees to hold and apply any funds received in such capacity in trust and in strict accordance with the terms of the Ground Lease. The Mortgagee's appointment as Depository shall cease effective on the later to occur of (x) the Condominium Date or (y) the encumbrance of the interest of the Hotel Unit Sublessee under the Hotel Unit Sublease with a "Mortgage" (as defined in the Ground Lease), and the acceptance of the Mortgagee thereunder of the appointment as "Depository" under the Ground Lease.

ARTICLE IV

Miscellaneous

1. Conflict. In the event of any inconsistency between the terms of this Agreement, the Ground Lease, and the terms of the Mortgage, or any documents or agreements executed in connection therewith, the terms of this Agreement shall control.

2. Modification. This Agreement may not be modified except by an agreement in writing signed by the parties or their respective successors in interest.

3. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

4. Notices. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and delivered to the party to who in the notice, demand or request is being made by personal delivery with receipt acknowledged or by mailing the same by certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service: (i) if to Landlord, at One World Financial Center, New York, New York 10281, Attention: President, with a copy to General Counsel, and with an additional copy to Torys, 237 Park Avenue, New York, New York 10017, Attention: Miroslav M. Fajt, Esq.; (ii) if to Tenant, c/o Millennium Partners, LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 31st Street, New York, New York 10022, Attention: Eric R. Landau, Esq.; (iii) if to Mortgagee, at _____ with an additional copy to Winston & Strawn, 200 Park Avenue, New York, New York 10166, Attention John C. Phelan, Esq.; or to such other address as any party may from time to time designate by notice given to the other parties in the manner herein provided at least fifteen (15) days prior to such address becoming effective.

5. Governing Law. (a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements to be performed entirely within such state (without regard to the principles of conflicts of laws).

(b) Should any term or provision of this Agreement or the application thereof to any Person or circumstances, to any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Agreement shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as are appropriate to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such

invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

6. Signature Counterparts. This Agreement may be executed in counterparts, each of which shall deemed an original but all of which taken together shall constitute one and the same Agreement.

7. Capitalized Terms. All capitalized terms used herein which are not otherwise defined shall have the respective meanings ascribed to such terms in the Ground Lease.

8. Application of Foreclosure Proceeds. Mortgagee hereby agrees that in the event that it shall at any time receive any funds or proceeds (including upon the foreclosure of its lien, in violation of the subordination provisions of Articles I and II hereof, Mortgagee shall hold any such funds in trust for and on behalf of Landlord and shall turn such funds over to Landlord on demand.

9. Further Assurances. Landlord, Tenant and Mortgagee shall execute and deliver such other further documents as may be necessary or reasonably requested by any other party hereto to carry out and consummate the transactions contemplated by this Agreement.

* * *

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By:_____
Name:
Title:

MILLENNIUM BPC DEVELOPMENT LLC

By:_____
Name:
Title:

[MORTGAGEE]

By:_____
Name: _____
Title: _____

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

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

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

_____
Notary Public

My Commission Expires:

Schedule A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

EXHIBIT E-2

COMMERCIAL MORTGAGE SUBORDINATION AND RECOGNITION AGREEMENT

THIS COMMERCIAL MORTGAGE SUBORDINATION AND RECOGNITION AGREEMENT (this "Agreement"), made as of this ____ day of ____, ___, among BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281 (together with its successors and assigns, "BPCA"); [INSERT NAME OF TENANT/SUBLESSEE UNDER HOTEL UNIT SUBLEASE AND HOLDER OF TITLE TO HOTEL UNIT] having an office at [ADDRESS] (together with its successors and assigns, "Mortgagor"); and [MORTGAGEE], a _____, having an office at _____ (together with its successors and assigns, "Mortgagee").

W I T N E S S E T H:

WHEREAS, pursuant to that certain Ground Lease dated as of January 1, 2000 between BPCA, as ground lessor, and Millennium BPC Development LLC, a New York limited liability company, as ground lessee (together with its successors and assigns, "Millennium"), a memorandum of which dated as of January 1, 2000 was recorded on _____, 200_, in Reel ___, Page ___ in the office of the City Register of the City of New York for the County of New York (such lease, as the same may be assigned, amended or restated from time to time, the "Ground Lease"), Millennium is the tenant of a leasehold estate of certain real property known as Site 1 located in Battery Park City, New York, New York, more particularly described on Schedule A attached hereto and made a part hereof (the "Land"), upon which Millennium has constructed a building and related improvements (the "Development") containing, among other things, a hotel known as "the Ritz-Carlton, Downtown New York" and residential apartments (Millennium's leasehold interest in the Land and the Development are collectively referred to herein as the "Premises");

WHEREAS, the leasehold condominium known as Millennium Point, having the street address 25 Battery Place, New York, New York 10280 (the "Condominium") was created by that certain declaration dated _____ , ____ , recorded on _____ in Reel ____, Page____ in the office of the City Register of the City of New York for the County of New York (the "Declaration") subjecting the ground lessee's interest in the Premises to the provisions of Article 9-B of the Real Property Law of the State of New York;

WHEREAS, the Condominium is subject and subordinate to the Ground Lease in all respects;

WHEREAS, in connection with the execution of the Ground Lease, BPCA and Millennium have executed and delivered the Hotel Unit Lease , a memorandum of which dated as of January 1, 2000 was recorded on _____, 200_, in Reel ___, Page ___ in the office of the City Register of the City of New York for the County of New York, pursuant to which the Hotel

Unit was leased by Millennium to BPCA, and the Hotel Unit Sublease, a memorandum of which dated as of January 1, 2000 was recorded on _____, 200_, in Reel ___, Page ___ in the office of the City Register of the City of New York for the County of New York, pursuant to which the Hotel Unit was subleased by BPCA to Millennium;

WHEREAS, the parties entered into the Hotel Unit Lease and the Hotel Unit Sublease to reflect and effectuate, inter alia, certain of their agreements concerning the conversion of Millennium's leasehold interest in the Premises to the Condominium form of ownership pursuant to Article 43 of the Ground Lease;

WHEREAS, [Expand to accurately describe the Mortgage and Mortgage Loan Documents] Mortgagor and Mortgagee are entering into to that certain [Loan Agreement] dated as of _____, _____, pursuant to which Mortgagee has agreed to make a loan to Mortgagor, which loan is evidenced by a **[Note]** in the amount of **[$AMOUNT]** and secured by that certain [Mortgage] dated as of _____ and recorded against Morgagor's fee interest in the Hotel Unit as Hotel Unit Owner and subleasehold interest in the Premises under the Hotel Unit Sublease (such [Mortgage], as the same may be amended, modified or supplemented in accordance with its terms from time to time, the "Mortgage"; and the Mortgage, together with the aforesaid Loan Agreement, the Note and the other documents or instruments related thereto, the "Mortgage Loan Documents"); and

WHEREAS, under the terms of the Ground Lease and the Hotel Unit Sublease, as applicable, Mortgagee may not file any Mortgage against Mortgagor's fee interest in the Hotel Unit as Hotel Unit Owner or subleasehold estate in the Premises under the Hotel Unit Sublease or be accorded the rights set forth in Article 10 of the Ground Lease with respect to any such Mortgage unless BPCA and Mortgagee enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements set forth herein and for ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto agree as follows:

ARTICLE I

1. Subordination. (a) Mortgagor and Mortgagee hereby covenant and agree that the Mortgage, the lien thereof, and Mortgagee's rights thereunder, including, without limitation, Mortgagee's rights to institute foreclosure proceedings pursuant to the terms of the Mortgage, are, and shall at all times continue to be, subject to the terms of this Agreement and subject in each and every respect to the Hotel Unit Sublease and subject and subordinate in each and every respect to the rights and interests of BPCA as Sublessor thereunder (including, without limitation, any rent payable to BPCA thereunder), the Ground Lease, the Hotel Unit Lease, the Master Lease, the Title Matters, and any other instruments senior to the Ground Lease and the Hotel Unit Lease, including without limitation, the purchase option contained in the Hotel Unit Lease. Mortgagor and Mortgagee, upon written request from BPCA, shall execute and deliver any certificates, documents or other instruments or agreements which BPCA may reasonably request to effectuate or confirm said subordination by Mortgagor and Mortgagee.

(b) To the extent that Section 339(z) of the Real Property Law has any application to any Rent payable by the Hotel Unit Sublessee under the Hotel Unit Sublease, the Mortgagee and Mortgagor, as Hotel Unit Owner, hereby expressly and irrevocably waive for the benefit of BPCA (including in its capacity as the Hotel Unit Lessee) and the Condominium Board any rights they may have under or pursuant to said Section 339(z).

2. Recognition. (a) BPCA hereby recognizes the rights of Mortgagee under the Mortgage, (i) to foreclose or otherwise enforce its lien against Mortgagor's interest in the Hotel Unit of the Condominium created pursuant to the Declaration and Mortgagor's subleasehold interest in the Hotel Unit under the Hotel Unit Sublease, or to acquire such interests by assignment in lieu of foreclosure, and (ii) to transfer its interest therein as provided for in the agreements between Mortgagee and Mortgagor, subject to BPCA's rights under the Ground Lease, the Hotel Unit Sublease and as the Hotel Unit Lessee under the Hotel Unit Lease; provided, however, that (i) Mortgagee acknowledges and agrees that all Hotel Rent shall be paid to BPCA before, and shall have a priority of lien over, any and all sums to be paid to Mortgagee pursuant to such foreclosure or assignment in lieu thereof, and (ii) in the event of foreclosure upon, or assignment in lieu thereof with respect to, Mortgagor's interest in the Hotel Unit of the Condominium, Mortgagee must simultaneously foreclose on Mortgagor's subleasehold interest in the Hotel Unit Sublease, subject to the terms and provisions of the Ground Lease and the Hotel Unit Sublease. BPCA further acknowledges and agrees that Mortgagee is hereby accorded all of the rights and privileges with respect to the Hotel Unit Sublease of a Mortgagee which are incorporated by reference from the Ground Lease.

3. Mortgagee's Right to Cure Defaults of Mortgagor as Sublessee under Hotel Unit Sublease. BPCA shall give a duplicate copy of each and every notice of Default under the Hotel Unit Sublease to Mortgagee at the same time as, and whenever, any such notice shall be given by BPCA to Mortgagor pursuant to the Hotel Unit Sublease. No such notice of Default by BPCA shall be deemed to have been given to Mortgagor unless and until a copy thereof shall have been so given to Mortgagee. Mortgagee shall thereupon have the right to remedy such Default pursuant to the terms and provisions of the Hotel Unit Sublease.

4. Specific Provisions with Respect to the Hotel. (a) Mortgagee agrees that it shall not transfer the lien of its Mortgage to the extent it attaches to Mortgagor's fee interest in the Hotel Unit independently of its lien on Mortgagor's subleasehold interest in the Hotel Unit under the Hotel Unit Sublease. Mortgagee further agrees that, in the event it shall release the lien of its Mortgage upon Mortgagor's subleasehold interest in the Hotel Unit under the Hotel Unit Sublease, any such release shall automatically release the lien of the Mortgage upon Mortgagor's fee ownership interest in the Hotel Unit of the Condominium.

(b) In the event BPCA, as lessee under the Hotel Unit Lease, exercises its option to purchase the Hotel Unit for the sum of ten and 00/100 Dollars ($10.00) as set forth in and pursuant to the terms of the Hotel Unit Lease, such purchase shall be free and clear of any liens of the Mortgage, and Mortgagee shall upon request of BPCA, execute any certificates or documents required by BPCA to effect the release of the lien of the Mortgage.

5. Modification of Hotel Unit Sublease. BPCA hereby covenants and agrees that, pursuant to Section 10.10(c) of the Ground Lease, in the event Mortgagee becomes the

owner of Mortgagor's leasehold estate in the Premises as sublessee under the Hotel Unit Sublease, Mortgagee shall not be bound by any modification or amendment of the Hotel Unit Sublease made (x) subsequent to the date of the Mortgage and delivery to BPCA of the notice provided in Section 10.10(a) of the Ground Lease and (y) prior to Mortgagee's acquisition of such interest, unless Mortgagee shall have consented to such modification or amendment at the time it was made or at the time of such acquisition.

ARTICLE II

1. Transfers. Mortgagee agrees that, without the prior written consent of BPCA, Mortgagee shall not sell, assign, transfer or otherwise dispose of all or any part of its interest in the Mortgage, other than a sale, assignment, transfer or other disposition to an Institutional Lender in accordance with the terms of the Ground Lease, it being agreed and acknowledged that the foregoing shall not be deemed to restrict Mortgagee's rights under the Hotel Unit Lease to sell, transfer or assign its interest in the Hotel Unit Sublease or the Hotel Unit, subject, however, to all of the applicable terms and provisions of the Hotel Unit Sublease.

2. Documents; Amendments. Mortgagee shall deliver to BPCA, concurrently with the execution and delivery of this Agreement, complete copies of all Mortgage Loan Documents, and forthwith upon the execution and delivery of any amendments, supplements, modifications or waivers of any of the Mortgage Loan Documents, deliver to the BPCA copies thereof.

3. Reporting. Mortgagee hereby agrees that it shall simultaneously send to BPCA copies of all notices of default given or made by such party pursuant to the Mortgage. Any such notice, a counterpart or copy of which Mortgagee fails to deliver to BPCA as required hereby, shall not be effective vis-a-vis Mortgagor, until such notice is delivered to BPCA. BPCA shall have the right, but not the obligation, to cure any and all defaults of Mortgagor under the Mortgage, on the same terms as are applicable to Mortgagee's right to cure Defaults by Mortgagor pursuant to Section 10.10 of the Ground Lease.

4. Certification. Upon the request of BPCA, Mortgagee and/or Mortgagor shall deliver to BPCA a certificate, executed on behalf of Mortgagee or Mortgagor, respectively, stating that, to the best knowledge of such party, neither party is in default with respect to its obligations under the Mortgage, or any documents or agreements executed in connection therewith and that no condition exists which, with notice or lapse of time or both, would constitute a default under the Mortgage Loan Documents, or any documents or agreements executed in connection therewith (or, if either party is in default or such a condition does exist, identifying such default and/or condition in detail), that the Mortgage Loan Documents, are in full force and effect and such other matters as reasonably requested by BPCA.

5. Curing of Defaults. Mortgagee acknowledges and agrees that its right to assign its interest in foreclosure of the subleasehold interest of Mortgagor as sublessee under the Hotel Unit Sublease, is preconditioned on its curing all monetary defaults of Mortgagor existing thereunder at the time of foreclosure and Mortgagee undertaking to cure all non-monetary

defaults of Mortgagor under the Hotel Unit Sublease as set forth in Section10.10 of the Ground Lease.

6. Estoppel. Mortgagee and Mortgagor hereby represent and warrant to BPCA as follows, with the understanding that BPCA is relying on the truth and accuracy of the representations and warranties set forth in this Section 7:

(a) The Mortgage and the other Mortgage Loan Documents are unmodified as of the date hereof and are in full force and effect and there are no other agreements between the Mortgagor and Mortgagee pertaining to the loan thereunder.

(b) Neither Mortgagee nor Mortgagor is aware of any default by the other party under the Mortgage or the Mortgage Loan Documents. As of the date of this Agreement, to Mortgagee's knowledge, Mortgagee has no accrued cause of action, claim or right of foreclosure under the Mortgage.

(c) BPCA has received a full and complete copy of all Mortgage Loan Documents.

7. Depository. Mortgagee is hereby appointed as Depository for all purposes of the Hotel Unit Sublease. Mortgagee hereby accepts such appointment and agrees to hold and apply any funds received in such capacity in trust and in strict accordance with the terms of the Ground Lease and the applicable provisions of the Hotel Unit Sublease.

ARTICLE III

Miscellaneous

1. Conflict. In the event of any inconsistency between the terms of this Agreement, the Ground Lease, the Hotel Unit Lease, the Hotel Unit Sublease and the terms of the Mortgage, or any documents or agreements executed in connection therewith, the terms of the Ground Lease shall control.

2. Modification. This Agreement may not be modified except by an agreement in writing signed by the parties or their respective successors in interest.

3. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

4. Notices. (a) All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and delivered to the party to who in the notice, demand or request is being made by personal delivery with receipt acknowledged or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service: (i) if to BPCA, at One World Financial

Center, New York, New York 10281, Attention: President, with a copy to General Counsel, and with an additional copy to Torys, 237 Park Avenue, New York, New York 10017, Attention: Miroslav M. Fajt, Esq.; (ii) if to Mortgagor, c/o Millennium Partners, LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attention: Eric R. Landau, Esq.; (iii) if to Mortgagee, at _____ with an additional copy to _____; or to such other address as any party may from time to time designate by notice given to the other parties in the manner herein provided at least fifteen (15) days prior to such address becoming effective.

(b) Every notice, demand, request or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received).

5. Governing Law. (a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements to be performed entirely within such state (without regard to the principles of conflicts of laws).

(b) Should any term or provision of this Agreement or the application thereof to any Person or circumstances, to any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Agreement shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as are appropriate to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

6. Signature Counterparts. This Agreement may be executed in counterparts, each of which shall deemed an original but all of which taken together shall constitute one and the same Agreement.

7. Capitalized Terms. All capitalized terms used herein which are not otherwise defined shall have the respective meanings ascribed to such terms in the Ground Lease.

8. Application of Foreclosure Proceeds. Mortgagee hereby agrees that in the event that it shall at any time receive any funds or proceeds (including upon the foreclosure of its lien) in violation of the subordination provisions of Articles I and II hereof, Mortgagee shall hold any such funds in trust for and on behalf of BPCA and shall turn such funds over to BPCA on demand.

10. Further Assurances. BPCA, Mortgagor and Mortgagee shall execute and deliver such other further documents as may be necessary or reasonably requested by any other party hereto, to carry out and consummate the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____
Name:
Title:

[MORTGAGOR]

By: _____
Name:
Title:

[MORTGAGEE]

By: _____
Name:
Title:

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

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

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

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

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

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

Schedule A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

EXHIBIT F

HOTEL OPERATOR SUBORDINATION NON-DISTURBANCE RECOGNITION AND ATTORNMENT AGREEMENT

THIS SUBORDINATION NON-DISTURBANCE RECOGNITION AND ATTORNMENT AGREEMENT (this "Agreement"), made as of this ____ day of ____, 2000, among BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York New York 10281 ("Landlord"); MILLENNIUM BPC DEVELOPMENT LLC, a New York limited liability company having an office at c/o Millennium Partners, 1995 Broadway, New York, New York 10023 ("Tenant"); MILLENNIUM PARTNERS BPC MANAGEMENT LLC, a Delaware limited liability company ("Condominium Manager") having an office at c/o Millennium Partners, 1995 Broadway, New York, New York 10023, and THE RITZ-CARLTON HOTEL COMPANY, L.L.C., a Delaware limited liability company having an office at 3414 Peachtree Road, N.E., Suite 300, Atlanta, Georgia 30326 ("Ritz-Carlton").

WITNESSETH:

WHEREAS, pursuant to that certain Ground Lease dated as of January 1, 2000 between Landlord and Tenant (such lease, as the same may be assigned, amended or restated from time to time, the "Ground Lease"), Tenant is the tenant of a leasehold estate of certain real property known as Site 1 located in Battery Park City, New York, New York, more particularly described on Schedule A attached hereto and made a part hereof (the "Land") upon which Tenant intends to construct a building and related improvements (the "Development"), containing among other things, a hotel to be known as "The Ritz-Carlton, Downtown New York" and residential apartments (the "Tenant's leasehold interest under the Ground Lease in the Land and the Development are collectively referred to herein as, the "Premises");

WHEREAS, Tenant intends to convert the Development to condominium ownership pursuant to the terms of the Ground Lease and thereupon to retain its affiliate, Condominium Manager, to manage the components of the Development other than the Hotel Portion pursuant to a Condominium Management Agreement;

WHEREAS, Ritz-Carlton and Tenant are parties to (i) an Operating Agreement dated as of August 31, 1999 (such Operating Agreement, as the same may hereafter be modified or amended subject to the applicable terms and conditions of the Ground Lease, the "Operating Agreement"), pursuant to which Ritz-Carlton has been engaged for the exclusive operation, direction, management and supervision of the Hotel and the Hotel Portion, (ii) a Pre-Commencement Agreement dated August 31, 1999 (such Pre-Commencement Agreement, as same may hereafter be modified or amended subject to the applicable terms and conditions of the Ground Lease, the "Pre-Commencement Agreement") and (iii) a Condominium Marketing License Agreement dated August 31, 1999 (such Condominium Marketing License Agreement, as same may hereafter be modified or amended subject to the applicable terms and conditions of the Ground Lease, the "Marketing Agreement"; and, together with the Operating Agreement and Pre-Commencement Agreement, collectively, the "Hotel Agreements"); and Ritz-Carlton and Condominium Manager have entered into a Condominium Submanagement Agreement regarding the Residential Portion dated August 31, 1999 (as same may hereafter be modified or amended subject to the applicable terms and conditions of the Ground Lease, the "Submanagement Agreement"; and together with the Hotel Agreements, collectively, the "Ritz Agreements").

WHEREAS, Ritz-Carlton and Tenant have requested that Landlord execute and deliver this Agreement, and Landlord has agreed to enter into this Agreement with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants and agreements set forth herein and for ten dollars ($10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto agree as follows:

1. Effectiveness. The agreements and obligations of Landlord set forth herein shall be of no force or effect until and unless (and are expressly contingent upon the occurrence of): (x) Completion of the Hotel Portion, (y) delivery of the Hotel Portion by Tenant to Ritz-Carlton, and (z) completion by (or on behalf of) Tenant of all work required to be performed by the date on which the Hotel Portion is delivered by Tenant to Ritz-Carlton (in accordance with the relevant provisions of the Ritz Agreements).

2. Subordination. (a) Ritz-Carlton hereby covenants and agrees that the Ritz Agreements and Ritz-Carlton's rights thereunder (including, without limitation, Ritz-Carlton's right to receive any fees or compensation thereunder) are, and shall at all times continue to be, subject and subordinate in each and every respect to the Ground Lease, the Master Lease, the Title Matters, all mortgagees and any other instruments senior to the Ground Lease, and, upon the Condominium Date, the Hotel Unit Lease and the Hotel Unit Sublease. Ritz-Carlton, upon written request from Landlord, shall execute and deliver any certificate or other instrument which Landlord may reasonably request to confirm said subordination by Ritz-Carlton.

(b) The parties hereto hereby agree that upon the Condominium Date, the rights and obligations of Tenant under any and all of the **[Hotel]** Agreements shall automatically, and without any further action on the part of any of the parties hereto, be transferred to and assumed by the subtenant under the Hotel Unit Sublease and the **[Hotel]** Agreements shall

continue to be subject and subordinate in all respects to the terms and provisions of the Ground Lease, the Master Lease, the Title Matters, all mortgages and any other instruments senior to the Ground Lease and the Hotel Unit Lease and Hotel Unit Sublease. From and after the Condominium Date, the Hotel Unit Lessor, in its capacity as the Hotel Unit Owner, shall be released from any and all obligations under the Hotel Agreements and the Hotel Unit Sublessee shall assume all obligations of Tenant thereunder. From and after the Condominium Date, any reference in Sections 4, 5, 6, 7, 8, 12, 13 and 14 hereof to "Landlord" shall be deemed to refer to Landlord, as the Hotel Unit Sublessor under the Hotel Unit Sublease, any reference therein to "Tenant" shall be deemed to refer to the Hotel Unit Sublessee under the Hotel Unit Sublease, and any reference therein to the "Ground Lease" shall be deemed to refer to the Hotel Unit Sublease. Upon the Condominium Date, the provisions of this Agreement shall bind Landlord in its capacity as the Hotel Unit Sublessor and as the owner of the Hotel Unit, if applicable.

3. Estoppel. Ritz-Carlton hereby represents and warrants to Landlord as follows, with the understanding that Landlord is relying on the truth and accuracy of the representations and warranties set forth in this Section 3:

(a) The Ritz Agreements are unmodified as of the date hereof (except for those modifications which Ritz-Carlton and/or Tenant shall have delivered to Landlord) and are in full force and effect.

(b) Ritz-Carlton has received payment in full of all fees due and currently payable to Ritz-Carlton under the Ritz Agreements.

(c) Ritz-Carlton is not aware of any default by either party under the Ritz Agreements. As of the date of this Agreement, to Ritz-Carlton's knowledge, Ritz-Carlton has no accrued cause of action, claim or right of offset under the Ritz Agreements or any defenses to its obligation to perform under the Ritz Agreements.

(d) Ritz-Carlton has approved all plans, specifications and drawings for the Hotel Portion required at the "Preliminary Design Phase" pursuant to the Pre-Commencement Agreement.

4. Landlord's Right to Cure Defaults of Tenant. (a) In the event of (i) an Event of Default by Tenant or Condominium Manager in the performance or observance of any of the terms and conditions of the Ritz Agreements, or (ii) any other occurrence which entitles Ritz-Carlton to terminate any of the Ritz Agreements as a result of a default by Tenant or Condominium Manager under the Ritz Agreements, and in the event that Ritz-Carlton gives written notice thereof to Tenant or Condominium Manager pursuant to the Ritz Agreements, Ritz-Carlton shall also give a duplicate copy (herein referred to as the "First Notice") of such notice to Landlord. In addition, in the event that such event of default or such other occurrence is not cured within the applicable cure period under the Ritz Agreements, and Ritz-Carlton intends to exercise its remedy of terminating the Ritz Agreements, Ritz-Carlton shall send a second notice (the "Second Notice") to Landlord, stating Ritz-Carlton's intention to terminate the Ritz Agreements. Subject to the balance of this Section 4(a), Ritz-Carlton shall forbear from taking any action to terminate the Ritz Agreements for a period of thirty (30) days after the

service of the First Notice, and for an additional period of thirty (30) days after the service of the Second Notice (if such Second Notice is required, as set forth above). Subject to the balance of this Section 4(a), no termination of the Ritz Agreements by Ritz-Carlton shall be effective unless the First Notice and the Second Notice have been delivered to Landlord and Landlord has failed within such thirty (30) days of the date of the Second Notice to cure the default or other occurrence giving rise to the termination right, or if the default or other occurrence cannot be cured within thirty (30) days has failed to commence and to diligently prosecute the cure of, the default which gave rise to such right of termination. The parties hereto hereby agree that Landlord shall have the right, but not the obligation, to cure any such defaults, and Ritz-Carlton hereby agrees to accept the performance by Landlord to cure any such default. In the case of a default by Tenant or Condominium Manager which requires the termination of the Ground Lease to cure or any default under any of the Ritz Agreements, Landlord shall be deemed to be diligently prosecuting the cure of such default if Landlord is diligently seeking to proceed with the termination of the Ground Lease. It is understood that any failure by Ritz-Carlton to give such a duplicate notice (either the First Notice or the Second Notice) to Landlord shall not itself be an event of default by Ritz-Carlton under the Ritz Agreements, but rather shall operate only to void (as between Ritz-Carlton and Landlord) the effectiveness of any such notice by Ritz-Carlton to Tenant or Condominium Manager under the applicable Ritz Agreements until such First Notice and Second Notice have been properly sent to Landlord.

(b) Landlord shall have the right to seek reimbursement ("Reimbursement") from Tenant and Tenant shall reimburse Landlord on demand for any reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Landlord in connection with the curing of any defaults under Section 4(a). Such Reimbursement shall constitute additional Rent due from Tenant under the terms and conditions of the Ground Lease. Landlord shall forward to Tenant documentation reasonably evidencing such costs and expenses.

5. Landlord Election of Options. Subject to the rights of Tenant's Mortgagee(s) under the Ground Lease, upon an Event of Default by Tenant that would give Landlord the right, immediately or after lapse of a period of time, to cancel or terminate the Ground Lease, provided Ritz-Carlton is not in default of its obligations under any of the Ritz Agreements beyond the expiration of any applicable grace period, Landlord shall not exercise such right until it has given written notice of such default to Ritz-Carlton (the "Landlord Election Notice"), pursuant to which Landlord shall elect either (i) to require Ritz-Carlton to attorn to Landlord as successor in interest to Tenant under the Ritz Agreements and not disturb Ritz-Carlton's rights to manage the Hotel pursuant to the Operating Agreement or impair any other rights of Ritz-Carlton under any of the Ritz Agreements in accordance with Section 6 hereof (the "Non-Disturbance Attornment Option") or (ii) to enter into a new lease with Ritz-Carlton for the remaining term of the Ground Lease and otherwise on the terms and conditions thereof in accordance with Section 7 hereof (the "New Lease Option").

6. Non-Disturbance Attornment Option. If Landlord elects the Non-Disturbance Attornment Option pursuant to the Landlord Election Notice, the following shall apply:

(a) Provided Ritz-Carlton shall not be in default beyond the expiration of any applicable grace period in the performance of any material, terms, covenants, conditions, and

provisions on its part to be performed under the Ritz Agreements, (i) in the event of the termination of the Ground Lease (by surrender, cancellation, default, or for any other reason other than a termination in connection with cancellation right granted to Landlord under the Ground Lease in connection with a casualty or condemnation), such termination shall not result in the cancellation or termination of the Ritz Agreements, and, except as may be necessary to fulfill any legal requirements, Ritz-Carlton will not be named or joined in connection with any action or proceeding by Landlord to terminate or enforce the Ground Lease, (ii) no default under the Ground Lease and no action or proceeding by Landlord shall result in a cancellation or termination of the Ritz Agreements, (iii) Landlord shall not disturb Ritz-Carlton's rights to manage the Hotel Portion pursuant to the Operating Agreement or impair any other rights of Ritz-Carlton under any of the other Ritz Agreements, and Landlord shall recognize the Ritz Agreements and Ritz-Carlton's rights thereunder for the balance of the terms of the Ritz Agreements.

(b) Notwithstanding the foregoing, in the event that any of the Ritz Agreements shall have terminated pursuant to operation of law, or otherwise after the exercise by Landlord of the Non-Disturbance Attornment Option, Landlord and Ritz-Carlton shall, upon the termination of the Ground Lease or the Ritz Agreements, enter into new Hotel Agreements and new Submanagement Agreement on the same terms and conditions as the Ritz Agreements, (the "New Agreements") which shall have the same force and effect as the Ritz Agreements for the balance of the respective terms thereof.

(c) Ritz-Carlton shall be bound to Landlord under all of the terms, covenants and conditions of the Ritz Agreements, or the New Agreements, as applicable, subject to the terms thereof, for the remainder of the respective terms of the Ritz Agreements, with the same force and effect as if Landlord were **[the "Owner", "Licensee" and "Condominium Manager"]**, as applicable, under the Ritz Agreements. Ritz-Carlton shall attorn to and recognize Landlord as **["Owner", "Licensee", and "Condominium Manager"]**, as applicable, under the Ritz Agreements, or the New Agreements, as applicable, with such attornment being effective and self-operative without the execution of any further instruments. Ritz-Carlton, upon written request from Landlord, shall execute and deliver any certificate or other instrument which Landlord may reasonably request to confirm such attornment by Ritz-Carlton. Landlord and Ritz-Carlton hereby waive the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give Landlord and Tenant any right or election to terminate or otherwise adversely affect the Operating Agreement or any other Ritz Agreements or the obligations of Tenant and Landlord thereunder by reason of any termination of the Ground Lease.

(d) Landlord shall succeed to the position, rights and obligations of **["Owner", "Licensee", and "Condominium Manager"]**, as applicable, under the Ritz Agreements; provided however that Landlord shall not be:

(i) liable for any previous act or omission of Tenant under any of the Ritz Agreements;

(ii) responsible for any monies then owing by Tenant to the credit of Ritz-Carlton;

(iii) subject to any offsets, claims, counterclaims, demands or defenses which Ritz-Carlton may have against Tenant under any of the Ritz Agreements;

(iv) bound by any covenant in the Operating Agreement or any of the other Ritz Agreements to either (i) undertake or complete any construction of, in or about the Hotel Portion (or any part thereof) or the Premises (or any part thereof), or in the event of a casualty or condemnation, to restore the Hotel Portion (or any part thereof) or the Premises (or any part thereof); or (ii) provide any money or credit or concession, by way of an allowance to Ritz-Carlton or otherwise, to or for any such construction or restoration in the case of a casualty or condemnation;

(v) bound by any amendment, or modification or surrender of any of the Ritz Agreements, made after the date hereof, to which Landlord shall not have given its consent in writing (which consent shall not be unreasonably withheld or delayed with respect to immaterial amendments and/or modifications); and

(vi) personally liable for the obligations of **["Owner", "Licensee", and "Condominium Manager"]** as applicable, under any of the Ritz Agreements, it being agreed that Ritz-Carlton shall look solely to the interest of Landlord in the Premises for satisfaction of such obligations.

(e) Nothing contained in this Section 6 shall constitute a waiver by Ritz-Carlton of (1) Landlord's obligation to perform the obligations of **["Owner", "Licensee" and "Condominium Manager"]**, as applicable, under the Ritz Agreements continuing or accruing after the effective date of the Landlord's exercise of its Non-Disturbance Attornment Option; (2) any right that Ritz-Carlton may have under the Ritz Agreements to pursue Tenant for its failure to perform obligations under the Ritz Agreements with respect to any assets of Tenant other than its interest in the Premises, or (3) any right that Ritz-Carlton may have under the Ritz Agreements to collect from cash derived from Hotel operations or other amounts to which it is entitled under the terms of the Ritz Agreements.

(f) If Landlord succeeds to the position, rights and obligations of **["Owner," "Licensee," and "Condominium Manager,"]** as applicable, under the Ritz Agreements, Landlord shall have the right to assign its interest under the Ritz Agreements to a third party or parties and, effective on any such assignment, Landlord shall be released from any further liability thereof.

7. New Lease Option. (a) If Landlord elects the New Lease Option pursuant to the Landlord Election Notice, Ritz-Carlton, shall, within thirty (30) business days after receipt of Landlord Election Notice, by written notice (the "Ritz-Carlton Notice") to Landlord, either accept or reject Landlord's exercise of the New Lease Option. Failure by Ritz-

Carlton to respond within such 30 business day period shall constitute an election by Ritz-Carlton to reject the New Lease Option.

(b) If Ritz-Carlton rejects (or is deemed to reject) Landlord's exercise of the New Lease Option pursuant to Section 7(a), Landlord shall have the right, but not the obligation, to (a) terminate any or all of the Ritz Agreements; or (b) exercise the Non-Disturbance Option by written notice to Ritz-Carlton within thirty (30) business days after receipt of the Ritz-Carlton Notice (or the expiration of the thirty (30) business day period referred to in Section 7(a), as applicable), in which case, the terms and conditions of Section 6 apply.

(c) If Ritz-Carlton accepts Landlord's exercise of the New Lease Option pursuant to the Ritz-Carlton Notice, the following shall apply:

(i) Landlord and Ritz-Carlton (or its designee or nominee), shall promptly execute and deliver a new lease of the Premises for the remainder of the Ground Lease term upon all of the covenants, conditions, limitations and agreements therein contained (the "Ritz-Carlton Lease") provided that Ritz-Carlton (x) shall pay to Landlord, simultaneously with the delivery of the Ritz-Carlton Lease, all unpaid Rental due under the Ground Lease up to and including the date of the commencement of the term of the Ritz-Carlton Lease and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred by Landlord in connection with the Default by Tenant which resulted in the termination of the Ground Lease, the termination of the Ground Lease and the preparation of the Ritz-Carlton Lease, and (y) shall cure all other Defaults existing under the Ground Lease which are susceptible to being cured within a reasonable period of time after gaining possession of the Premises (not to exceed 120 days) subject to extension due to Unavoidable Delays.

(ii) The Ritz-Carlton Lease and the leasehold (or subleasehold) estate thereby created shall, subject to the same conditions contained in the Ground Lease, continue to maintain the same priority as the Ground Lease with regard to any mortgage, including any fee mortgage, on the Premises or any part thereof or any other lien, charge or encumbrance thereon whether or not the same shall then be in existence. Upon the execution of the Ritz-Carlton Lease any sums then held by or payable to Depository shall be deemed to be held by or payable to it as Depository under the Ritz-Carlton Lease.

(iii) Upon the execution and delivery of the Ritz-Carlton Lease under this Section, all Subleases, which theretofore have been assigned to, or made by, Landlord shall be assigned and transferred, without recourse, by Landlord to Ritz-Carlton in the Ritz-Carlton Lease.

Between the date of termination of the Ground Lease and the date of execution of the Ritz-Carlton Lease, if Ritz-Carlton shall have accepted the Ritz-Carlton Lease as provided in Section 7(a), Landlord shall not cancel any Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of the Ground Lease) or enter into new Subleases without the consent of Ritz-Carlton.

8. Payments to Landlord. Ritz-Carlton and Tenant hereby agree that, following an Event of Default by Tenant under the Ground Lease of which Landlord has notified Ritz-Carlton in writing, in the event of a demand on Ritz-Carlton by Landlord for the payment to it of any sums due to Tenant under the Ritz Agreements, Ritz-Carlton shall, and is hereby irrevocably authorized and directed by Tenant, to pay said sums directly to Landlord for so long as such Event of Default is outstanding; payment of said sums by Ritz-Carlton to Landlord pursuant to such demand shall constitute performance of Ritz-Carlton's obligations under the Ritz Agreements for the payment of the same to Tenant, to the extent of the payments so made. Ritz-Carlton shall have no obligation to investigate the validity of any such default notices and Landlord shall apply payments so received to sums due under the Ground Lease.

9. Leases Subordinate. Any lease entered into by Ritz-Carlton on behalf of Tenant or Hotel Subtenant with respect to the Hotel, or any portion thereof, shall be made expressly subject and subordinate to the Ground Lease, the Master Lease, the Title Matters, all mortgagees and any other instruments senior to the Ground Lease, and from and after the Condominium Date, the Hotel Unit Lease and Hotel Unit Sublease.

10. Hotel Name Change. Tenant and Ritz-Carlton agree not to exclude the phrase "Ritz-Carlton" from the name of the Hotel without the prior written consent of Landlord.

11. Reporting. Ritz-Carlton hereby acknowledges that Tenant and Condominium Manager may deliver to Landlord copies of any and all documents of whatever nature, whether prepared by Ritz-Carlton or otherwise, relating to the Ritz Agreements. Tenant, Condominium Manager and Ritz-Carlton shall simultaneously send to Landlord copies of all notices of default given or made by such party pursuant to the Ritz Agreements at the same time sent to the other party. Upon the occurrence, and written notification to Ritz-Carlton, of any default under the Ground Lease with respect to the Hotel or any of the Ritz Agreements, Ritz-Carlton shall simultaneously deliver to Landlord for so long as such default is outstanding a counterpart of any "Annual Operating Projections" pursuant to Section 4.1 of the Operating Agreement, and any annual statement of profit and loss and other similar annual financial statements furnished to Tenant pursuant to Section 4.4 of the Operating Agreement as well as copies of all notices and other instruments or communications required or permitted to be given or made by Ritz-Carlton pursuant to the Operating Agreement. Any plan, report, projection, statement or notice, a counterpart or copy of which Ritz-Carlton fails to deliver to Landlord as required hereby, shall not be effective vis-a-vis Landlord, until such plan, report, projection, statement or notice, as the case may be, is delivered to Landlord.

12. Inspection of Books and Records. Landlord shall have the same rights of inspection of the books and records maintained by Ritz-Carlton as are given to Tenant under the

Operating Agreement provided Landlord gives Tenant and Ritz-Carlton written notice prior to exercising such rights of inspection and uses best efforts to not interfere with hotel operations during any such inspection and provided Landlord complies with the applicable provisions of the Operating Agreement with respect thereto.

13. Certification. Upon the request of Landlord, Ritz-Carlton shall deliver to Landlord, or, following the termination of the Ground Lease, a certificate, executed on behalf of Ritz-Carlton stating that, to the best knowledge of Ritz-Carlton, neither party is in default with respect to its obligations under the Ritz Agreements and that no condition exists which, with notice or lapse of time or both, would constitute a default under the Ritz Agreements (or, if either party is in default or such a condition does exist, identifying such default and/or condition in detail), that the Ritz Agreements are in full force and effect and such other matters as reasonably requested by Landlord, including the other matters specified in Section 3 hereof. In addition, upon request from Landlord, Ritz-Carlton and Tenant shall deliver to Landlord true and complete copies of all Ritz Agreements and any amendments, modifications or waivers thereof or consents granted thereunder, and any and all other agreements pertaining to the operation, management and supervision of the Hotel.

14. Conflict. In the event of any inconsistency between the terms of this Agreement and the terms of the Ritz Agreements, the terms of this Agreement shall control.

16. Modification. This Agreement may not be modified except by an agreement in writing signed by the parties or their respective successors in interest.

17. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

18. Notices. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and delivered to the party to whom the notice, demand or request is being made by personal delivery with receipt acknowledged or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, (i) if to Landlord, at One World Financial Center, New York, New York 10281, Attention: President, with a copy to General Counsel, and with an additional copy to Torys, 237 Park Avenue, New York, New York 10017, Attention: Miroslav M. Fajt, Esq.; (b) if to Tenant or Condominium Manager, c/o Millennium Partners, LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55st Street, New York, New York 10022, Attention: Eric R. Landau, Esq.; (c) if to Ritz-Carlton, c/o The Ritz-Carlton Hotel Company, L.L.C., 3414 Peachtree Road, N.E., Suite 300, Atlanta, Georgia 30326, Attention: General Counsel, with a copy to: Marriott International, Inc., Dept. 52/923, 10400 Fernwood Road, Bethesda, Maryland 20817, Attention: Senior Operations Attorney; or to such other address as any party may from time to time designate by notice given to the other parties in the manner herein provided at least fifteen (15) days prior to such address becoming effective.

19. Governing Law. (a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of

the State of New York applicable to agreements to be performed entirely within such state (without regard to the principles of conflicts of laws).

(b) Should any term or provision of this Agreement or the application thereof to any Person or circumstances, to any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Agreement shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as are appropriate to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

20. Signature Counterparts. This Agreement may be executed in counterparts, each of which shall deemed an original but all of which taken together shall constitute one and the same Agreement.

21. Capitalized Terms. All capitalized terms used herein which are not otherwise defined shall have the respective meanings ascribed to such terms in the Ground Lease.

22. Further Assurances. Landlord, Tenant, Condominium Managers and Ritz-Carlton shall execute such documents as may be necessary or reasonably requested by any party hereto to carry out and consummate the transactions contemplated by this Agreement.

23. Separate Agreement. At the request of any party hereto, the parties shall, upon the Condominium Date, enter into separate agreements, the form and substance equivalent to the terms and provisions hereof, with respect to the Hotel Agreements, on one hand, and the Submanagement Agreement, on the other hand.

24. Capacity of Tenant. Tenant is entering into this Agreement in its capacity as "Tenant" and/or "Sponsor" under the Ground Lease, the "Hotel Unit Lessor", under the Hotel Unit Lease, and the "Hotel Unit Sublessee" under the Hotel Unit Sublease. **[In the event that all such parties are not the same Person, this Agreement shall be modified to add all such Persons as parties to this Agreement.]**

* * *

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By:_____
Name:
Title:

MILLENNIUM BPC DEVELOPMENT LLC

By: _____
Name:
Title:

MILLENNIUM PARTNERS BPC MANAGEMENT LLC

By: MILLENNIUM PARTNERS MANAGEMENT LLC

By: MILLENNIUM MANAGER I, INC.

By:_____
Name:
Title:

THE RITZ-CARLTON HOTEL COMPANY, L.L.C., a Delaware limited liability company

By:_____
Name:
Title:

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

On the __ day of _____, ____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

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

_____
Notary Public

My Commission Expires:

Schedule A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

EXHIBIT G

Letter re: Exceptions to Schematic Approval/Design Development Approval

Timothy S. Carey
President / CEO

BATTERY PARK CITY AUTHORITY

October 18, 1999

Philip E. Aarons
Millennium Partners
1995 Broadway
New York, NY 10023

Re: Site 1

Dear Philip:

This letter is intended to confirm the understandings reached in our design meeting on October 4, 1999. The agreements set forth in this letter assume that the design of the project will be in conformance with the schematic submission previously made to the Authority, except as modified by the renderings, materials and models shown on October 4 or as otherwise approved by the Authority.

The following shall apply with respect to the design of the project:

1. The Public Open Space Our understanding is that you have agreed to establish a process to work with the Authority in completing the design of the Public Open Space which will remain subject to the Authority's approval consistent with this letter and the Design Guidelines. Unless otherwise modified by agreement between us, the Public Open Space will contain, on its eastern side, the two water features with a landscaped mound with trees as shown on the model presented on October 4. The Authority agrees with your view that additional built-in planting beds in the central area of the Public Open Space are less preferable than a more open space. Therefore, the central area will be a plaza with an artwork of significant vertical scale and seating for the public as well as a café operated by the hotel. The number, type and placement of tables and chairs both for restaurant patrons and for visitors which are not restaurant customers will be subject to the approval of the Authority. We accept your commitment to use granite paving or, with the Authority's approval, other paving materials of high quality. The artwork is to be made of quality materials, with the design and the artist subject to the Authority's approval. All landscape materials in the mounded area and other parts of the Public Open Space will be approved by the Authority.

2. The Ground Floor We accept your design of the ground floor hotel entrance, the restaurant and museum entrances at grade and the northeast corner of the building subject to (i) your agreement to use stainless steel on all non-glass elements of doors (except the loading dock and the emergency exits on First Place), column covers, and entrance canopies and (ii) the Authority's approval of the window treatment of the glass area (which shall be primarily clear or vision glass) on the ground floor of the east side north of the service lift.

3. Battery Place Facade Top At the top of the streetwall, a kynar finish metal for a cornice or articulated roof line will be required. You have agreed that the design you showed on October 4 will be revised to create a more prominent cornice or articulated roof line and such redesign will be subject to the Authority's approval.

4. Balconies The balconies on the south side of the building as shown will be removed. Alternative design elements to achieve articulate the planar change on the south side of the tower will be subject to the Authority's approval

5. Restaurant at First Tower Floor The restaurant on the first tower floor is to have a minimum interior area of approximately 1900 square feet, including a minimum dining area of approximately 1200 square feet, and a minimum outdoor dining area of approximately 700 square feet (with the understanding that, subject to approval of the Department of Buildings, Millennium will provide for outdoor seating of approximately 1900 square feet or a lesser amount representing the maximum approved by the Department of Buildings). The hotel operator will use its best efforts to apply for a liquor license for the restaurant. The restaurant will be open to the general public.

6. Tower Rooftop Treatment The modifications presented for the glass top of the residential tower, (i.e., the change of material from the corduroy brick to metal and, in the same location, the new setbacks on the south and north sides of the tower) are approved.

I am certain that we can move forward expeditiously on those design issues which we have agreed will require further attention. I look forward to the commencement of construction for this important project. Please call me if you have any questions.

Very truly yours,

Timothy S. Carey

EXHIBIT H

FORM OF LETTER OF CREDIT

LETTER OF CREDIT DEPARTMENT
[BANK]

IRREVOCABLE STANDBY LETTER OF CREDIT
NO. _____

DATE
[DATE OF ISSUANCE]

BENEFICIARY
BATTERY PARK CITY AUTHORITY
D/B/A HUGH L. CAREY BATTERY PARK CITY AUTHORITY
ONE WORLD FINANCIAL CENTER
24TH FLOOR
NEW YORK, NY 10281

APPLICANT
MILLENNIUM BPC DEVELOPMENT LLC
[ADDRESS]

GENTLEMEN/LADIES:

FOR THE ACCOUNT OF MILLENNIUM BPC DEVELOPMENT LLC, WE HEREBY OPEN IN YOUR FAVOR THE [BANK NAME] IRREVOCABLE STANDBY LETTER OF CREDIT NO. [_____] ("LETTER OF CREDIT") FOR AN AMOUNT NOT EXCEEDING A TOTAL OF [AMOUNT] DOLLARS U.S. CURRENCY (U.S. $_____), EFFECTIVE IMMEDIATELY AND EXPIRING ON [1 YEAR AFTER ABOVE DATE], OR IF SUCH DAY IS NOT A BUSINESS DAY, THE NEXT FOLLOWING BUSINESS DAY.

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST A SIGHT DRAFT(S) ON US COMPLETED BY YOU, FOR ALL OR ANY PART OF THIS LETTER OF CREDIT, ACCOMPANIED BY YOUR WRITTEN STATEMENT, PURPORTEDLY SIGNED BY ONE OF YOUR AUTHORIZED REPRESENTATIVES, READING AS FOLLOWS:

"PAY TO BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, THE SUM OF U.S. $_____ IN IMMEDIATELY AVAILABLE FUNDS TO ABA NO. _____ REFERENCE _____. THIS DRAFT IS DRAWN PURSUANT TO THE GROUND LEASE DATED JANUARY 1, 2000 BETWEEN US, AS LANDLORD, AND MILLENNIUM BPC DEVELOPMENT LLC, AS TENANT, UNDER THE [BANK NAME] IRREVOCABLE STANDBY LETTER OF CREDIT NO._____."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE EXTENDED FOR AN ADDITIONAL PERIOD OF ONE YEAR FROM THE PRESENT OR ANY FUTURE

EXPIRATION DATE HEREOF UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO SUCH DATE WE SHALL NOTIFY YOU IN WRITING (CERTIFIED MAIL, RETURN RECEIPT REQUESTED), THAT WE ELECT NOT TO RENEW THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD. UPON RECEIPT BY YOU OF SUCH NOTICE YOU MAY DRAW HEREUNDER BY PRESENTING YOUR DRAFT ON US AT SIGHT ACCOMPANIED BY YOUR WRITTEN STATEMENT, PURPORTEDLY SIGNED BY ONE OF YOUR AUTHORIZED REPRESENTATIVES, READING AS FOLLOWS: "WE HAVE NOT RECEIVED AN APPROPRIATE RENEWAL OF THE [BANK NAME] LETTER OF CREDIT NO. _____"

WE WILL PROMPTLY HONOR ALL DRAFTS DRAWN IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT IF RECEIVED NOT LATER THAN OUR CLOSE OF BUSINNESS, 5:00 P.M., NEW YORK CITY TIME, ON OR BEFORE THE EXPIRATION DATE OR ANY AUTOMATICALLY EXTENDED EXPIRATION DATE AS PROVIDED FOR HEREIN, AT OUR OFFICE LOCATED AT [ ], NEW YORK, NY [ATTENTION: [ ].

IN LIEU OF DELIVERY OF A DRAFT REQUIRED HEREBY, SUCH DRAFT MAY BE TRANSMITTED TO US BY TELECOPY TO TELECOPY NO. _____, ATTENTION: _____.

DRAFTS PRESENTED AT OUR OFFICE AT THE ADDRESS SET FORTH ABOVE OR BY TELECOPY AS SET FORTH ABOVE NO LATER THAN 10:00 A.M. ON ANY BUSINESS DAY SHALL BE HONORED ON THE DATE OF PRESENTATION, BY PAYMENT IN ACCORDANCE WITH YOUR PAYMENT INSTRUCTIONS THAT ACCOMPANY EACH SUCH DRAFT. IF REQUESTED BY YOU, PAYMENT UNDER THIS LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS TO YOUR ACCOUNT AS SPECIFIED IN THE DRAFT, OR BY DEPOSIT OF SAME DAY FUNDS IN YOUR DESIGNATED ACCOUNT THAT YOU MAINTAIN WITH US.

AS USED HEREIN, "BUSINESS DAY" SHALL MEAN A DAY ON WHICH BANKS LOCATED IN THE STATE OF NEW YORK ARE NOT AUTHORIZED OR REQUIRED BY LAW TO CLOSE AND ON WHICH THE NEW YORK STOCK EXCHANGE IS NOT CLOSED. ANY DAY ON WHICH OUR BUSINESS IS INTERRUPTED BY AN ACT OF GOD, RIOT, CIVIL COMMOTION, INSURRECTION, WAR, OR ANY OTHER CAUSE BEYOND OUR CONTROL OR BY ANY STRIKES OR LOCKOUTS SHALL NOT BE DEEMED TO BE A "BUSINESS DAY".

THIS LETTER OF CREDIT SETS FORTH IN FULL OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN, EXCEPT THE DRAFTS REFERRED TO HEREIN; AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT, INSTRUMENT OR AGREEMENT EXCEPT FOR SUCH DRAFTS.

THIS LETTER OF CREDIT SHALL BE GOVERENED BY AND SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500 ("UCP"), AND TO THE EXTENT NOT INCONSISTENT WITH THE UCP, THE LAWS OF THE STATE OF NEW YORK.

SINCERELY,

[AUTHORIZED SIGNATURE]

EXHIBIT I

MASTER LANDLORD ESTOPPEL CERTIFICATE

The undersigned, BATTERY PARK CITY AUTHORITY ("BPCA") d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York, having an office at One World Financial Center, 24th Floor, New York, New York 10281, as master landlord under that certain Restated Amended Agreement of Lease between BPC Development Corporation and Battery Park City Authority, dated as of June 10, 1980 and recorded in memorandum form in the City Register's Office, New York County, on June 11, 1980 in Reel 527, Page 163, as amended by First Amendment to the Restated Amended Lease between BPCA, as landlord, and BPCA, as tenant, dated as of June 15, 1983 and recorded on June 20, 1983 in Reel 696, Page 424 and as further amended by Second Amendment to the Restated Amended Lease between BPCA, as landlord, and BPCA, as tenant, dated as of June 15, 1983 and recorded on June 20, 1983 in Reel 696, Page 432 and as further amended by Third Amendment to Restated Amended Lease between BPCA, as landlord, and BPCA, as tenant, dated as of August 15, 1986 and recorded on October 22, 1986 in Reel 1133, Page 569 and as further amended by Fourth Lease Amendment to Restated Amended Lease between BPCA, as landlord, and BPCA, as tenant, dated as of May 25, 1990 and recorded on May 30, 1990 in Reel 1697, Page 302 (as the same may be assigned, amended or restated from time to time, collectively, the "Master Lease"), and as landlord under that certain ground lease with MILLENNIUM BPC DEVELOPMENT LLC, dated simultaneously herewith (such lease, as the same may be assigned, amended or restated from time to time, the "Lease"), for certain land known as Site 1 located in Battery Park City, New York, New York, on behalf of itself, its successors and assigns, hereby certifies to MILLENNIUM BPC DEVELOPMENT LLC as follows:

1. That the Lease conforms to the requirements in respect of the Basic Sublease as set forth in Article XIII of the Master Lease, and that the exercise by MILLENNIUM BPC DEVELOPMENT LLC of any of the rights and remedies permitted by the Lease shall not violate, or constitute a default under, the Master Lease;

2. That the Master Lease and the Design Guidelines (as such term is defined in the Lease) are unmodified and in full force and effect;

3. That, to the best of BPCA's knowledge, BPCA is not in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in the Master Lease;

4. That BPCA has paid all rental due and payable by the tenant under the Master Lease for the period up to and including December 31, 1999;

5. That, in accordance with the definitions of the following quoted terms as set forth in Article I of the Master Lease, (i) the Lease is a "Basic Sublease", (ii) MILLENNIUM BPC DEVELOPMENT LLC is a "Developer" and (iii) the Premises (as such term is defined in the Lease) is a "Parcel"; and

6. That BPCA will execute a Certificate, in form and substance substantially the same as this document, with such changes as may be necessary to reflect the then existing state of facts in connection with any Mortgage (as such term is defined in the Lease), promptly upon the request of the tenant under the Lease.

This Certificate insures to the benefit MILLENNIUM BPC DEVELOPMENT LLC and its successors and assigns.

Dated: January ___, 2000.

BATTERY PARK CITY AUTHORITY d/b/a
HUGH L. CAREY BATTERY PARK CITY
AUTHORITY
as Landlord under the Master Lease

By: _____
Name: Timothy S. Carey
Title: President and CEO

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared Timothy S. Carey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

EXHIBIT J

MASTER LANDLORD NON-DISTURBANCE AND RECOGNITION AGREEMENT

THIS MASTER LANDLORD NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "Agreement"), made as of this ___ day of _____, _____, by and between BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281 ("BPCA") and **MILLENNIUM BPC DEVELOPMENT LLC**, a New York limited liability company having an office c/o Millennium Partners, 1995 Broadway, New York, New York 10023 ("Ground Lessee").

W I T N E S S E T H:

WHEREAS, BPCA is the fee owner of certain real property located in the City, County and State of New York within the area bounded on the east and west, respectively, by the U.S. Bulkhead Line and the U.S. Pierhead Line of the Hudson River, on the north by Reade Street extended westerly to the said Pierhead Line, and on the south by the lands of Battery Park and the southerly line of Battery Place (the "Property"); and

WHEREAS, BPCA is both the landlord and tenant under that certain Restated Amended Agreement of Lease, made as of June 10, 1980, between BPC Development Corporation, as landlord, and BPCA, as tenant, demising the Property to BPCA, a Memorandum of which was recorded on June 11, 1980 in the office of the City Register of the City of New York for the County of New York in Reel 527 at page 163, as amended by First Amendment to Restated Amended Lease dated as of June 15, 1983 and recorded on June 20, 1993 in said Register's Office in Reel 696 at page 424, Second Amendment to Restated Amended Lease dated as of June 15, 1993 and recorded on June 20, 1983 in said Register's Office in Reel 696 at 432, Third Amendment to Restated Amended Lease dated as of August 15, 1986 and recorded on October 22, 1996 in said Register's Office in Reel 1133 at Page 569 and Fourth Lease Amendment to Restated Amended Lease dated as of May 25, 1990 and recorded on May 30, 1990 in said Register's Office in Reel 1697 at page 302, as the same may have been, or may hereafter be, amended, modified or supplemented (as the same may be assigned, asmended or restated from time to time, collectively, the "Master Lease") (BPCA, in its capacity as landlord under the Master Lease (and its successors and assigns), is hereinafter referred to as "Master Landlord;" BPCA in its capacity as tenant under the Master Lease (and its successors and assigns) is hereinafter referred to as "Ground Lessor"), and

WHEREAS, pursuant to Article XIII of the Master Lease, Ground Lessor, as tenant thereunder, entered into a certain ground lease (such lease, as the same may be assigned, amended or restated from time to time, the "Ground Lease"), dated of even date herewith, with Ground Lessee demising to Ground Lessee a certain portion of the Property known as Site 1

located in Battery Park City, New York, New York, as more particularly described in Exhibit A attached hereto and made a part hereof, a memorandum of which Ground Lease is intended to be recorded immediately prior hereto in said City Register's Office (all capitalized terms used herein but not otherwise defined in this Agreement shall have the meanings given such terms in the Ground Lease);

WHEREAS, the Ground Lease provides that Ground Lessee shall construct the Building on the Land, containing, among other things, the Hotel Portion and, the Residential Portion and the Public Amenity Space subject to and in accordance with the applicable provisions of the Ground Lease;

WHEREAS, in connection with the execution of the Ground Lease, Ground Lessee requested, and Ground Lessor agreed, that Ground Lessee be permitted, subject to the terms and provisions of the Ground Lease, to submit Ground Lessee's interest in the Premises under the Ground Lease to the condominium form of ownership pursuant to the provisions of the Condominium Act, as more specifically provided in Article 43 of the Ground Lease;

WHEREAS, in connection with such conversion to condominium form of ownership, Ground Lessee requested that Ground Lessor make, and Ground Lessor agreed to make, certain accommodations to Ground Lessee under the Ground Lease;

WHEREAS, the parties have agreed to implement the foregoing accommodations by executing a Hotel Unit Lease dated as of January 1, 2000 (such lease, as the same may be assigned, amended or restated from time to time, the "Hotel Unit Lease"), the "Hotel Unit Lease") and effective upon the release thereof from escrow pursuant to that certain Hotel Unit Escrow Agreement, between Ground Lessee, as lessor, and Ground Lessor, as lessee, and a Hotel Unit Sublease dated as of January 1, 2000 (such sublease, as the same may be assigned, amended or restated from time to time, the "Hotel Unit Sublease") and effective upon the release thereof from escrow pursuant to that certain Hotel Unit Escrow Agreement, between Ground Lessor, as sublessor, and Ground Lessee, as sublessee, pursuant to which the Hotel Unit will be leased by Ground Lessee to Ground Lessor pursuant to the Hotel Unit Lease and simultaneously subleased by Ground Lessor to Ground Lessee pursuant to the Hotel Unit Sublease; and

WHEREAS, the parties hereto desire to provide (i) Ground Lessee possession of the Premises (a) under the Ground Lease upon the terms and conditions therein prescribed and (b) under the Hotel Unit Sublease from and after the Condominium Date upon the terms and conditions therein prescribed for the term therein mentioned irrespective of a termination of the Master Lease, and (ii) (a) until the Condominium Date the rights of a Mortgagee to cure defaults by Ground Lessee under the Ground Lease subject to and in accordance with the applicable terms of the Ground Lease and to obtain a new lease of the Premises, containing all of the terms and conditions of the Ground Lease, in the event of a termination of the Ground Lease, and (b) from and after the Condominium Date, the rights of such Mortgagee to cure defaults by Ground Lessee as sublessee under the Hotel Unit Sublease and to obtain a new lease of the Hotel Unit, containing all of the terms and conditions of the Hotel Unit Sublease, in the event of a termination of the Hotel Unit Sublease.

NOW THEREFORE, in consideration of the sum of One Dollar ($1.00), in hand paid by each of the parties hereto to the other, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Ground Lessee covenants and agrees that if there occurs a termination of the Master Lease pursuant to the provisions thereof, then Ground Lessee will attorn to and recognize Master Landlord as the landlord under the Ground Lease, said attornment to be upon the then executory terms of the Ground Lease. The aforesaid attornment shall be effective and self-operative without execution of any further instruments upon such termination, but Ground Lessee agrees to execute and deliver, at any time and from time to time, upon the request of the Master Landlord any instrument which may be necessary or appropriate to evidence such attornment. Ground Lessee further waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Ground Lessee any right of election to terminate the Ground Lease or to surrender possession of the Premises in the event any proceedings is brought by Master Landlord to terminate the same, and agrees that the Ground Lease shall not be affected in any way whatsoever by any such proceeding.

2. Ground Lessor, as fee owner, hereby agrees, for the benefit of Ground Lessee as lessee under the Ground Lease and for the benefit of any present or future permitted lessee under the Ground Lease (including, without limitation, a Mortgagee subject to the applicable terms of the Ground Lease), that upon the termination of the Master Lease pursuant to any of the provisions of Article XV of the Master Lease or by reason of any other matter or thing, Ground Lessor, as fee owner and in its capacity as landlord under the Master Lease, will recognize Ground Lessee as lessee under the Ground Lease or any permitted transferee or assignee of Ground Lessee's interest therein (whether becoming such through permitted assignment, foreclosure of any Mortgage or assignment in lieu of foreclosure and including any nominee or designee of Mortgagee) as the direct tenant of Ground Lessor, as fee owner, under the Ground Lease, for the entire remainder of the term thereof, upon and subject to all of the terms, covenants and conditions set forth therein; provided, however, that (a) at the time of the termination of the Master Lease no Event of Default (as such term is defined in the Ground Lease) exists under the Ground Lease which at such time would then permit the landlord thereunder to terminate the Ground Lease or to exercise any remedy for dispossession or re-entry provided for therein, and (b) Ground Lessee, or such transferee or assignee attorns to Ground Lessor and recognizes Ground Lessor, as fee owner, as Ground Lessee's or such transferee's or assignee's direct landlord under such Ground Lease, as the case may be.

3. From and after the Condominium Date, the rights of and benefits to Ground Lessee and Mortgagee set forth in this Agreement shall also apply to, and be deemed to refer to, the Hotel Unit Sublease subject to the terms hereof.

4. No modification, amendment, supplement or waiver of this Agreement shall be of any force or effect, except by a written instrument signed by the party or parties against whom such modification, amendment, supplement or waiver is sought to be enforced.

5. This Agreement shall inure to the benefit of and be binding upon the parties hereto, any Mortgagee (including its nominee or designee), and their respective successors and assigns.

6. This Agreement and the covenants herein contained are intended to run with and bind all lands and estates affected hereby.

7. BPCA and Ground Lessee shall execute such documents as may be necessary or reasonably requested by any party hereto to carry out and consummate the transactions contemplated by this Agreement.

8. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and delivered to the party to whom the notice, demand or request is being made by personal delivery with receipt acknowledged or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, (a) if to BPCA, at One World Financial Center, New York, New York 10281, Attention: President, with a copy to General Counsel, and with an additional copy to Torys, 237 Park Avenue, New York, New York 10017, Attention: Miroslav M. Fajt, Esq.; and (b) if to Ground Lessee, c/o Millennium Partners, LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55st Street, New York, New York 10022, Attention: Eric R. Landau, Esq.; or to such other address as any party may from time to time designate by notice given to the other parties in the manner herein provided at least fifteen (15) days prior to such address becoming effective. Every notice is deemed to have been given and served when addressed as provided in the preceding sentence, and when delivered (if delivered by hand), or three business days after the date when deposited with the United States mail, postage prepaid, in the manner aforesaid (if mailed), or one business day after the date when deposited with the courier service (except that a notice designating the name or address of a person to whom any notice, or copy thereof, must be sent is deemed to have been given when same is received.

9. This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements to be performed entirely within such state (without regard to principles of conflicts of laws).

10. Should any term or provision of this Agreement or the application thereof to any Person or circumstances, to any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Agreement shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as are appropriate to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified shall be binding upon and

enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

* * *

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

BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____
Name: Timothy S. Carey
Title: President and CEO

MILLENNIUM BPC DEVELOPMENT LLC, a New York limited liability company

By: _____
Name: Philip E. Aarons
Title: Vice President

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

On the 7th day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Timothy S. Carey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 7th day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Philip E. Aarons, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

EXHIBIT A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

EXHIBIT K
BATTERY PARK CITY
AFFIRMATIVE ACTION PROGRAM

This Affirmative Action Program has been adopted by Battery Park City Authority ("BPCA"), pursuant to the provisions of Section 1974-d of the Public Authorities Law as modified by Section 317 of the Executive Law,[i] in order to assist Tenant, its contractors, subcontractors and suppliers (collectively, "Contractors") and all other persons participating in the development, construction, operation and maintenance of that portion of the Battery Park City South Residential Neighborhood Development identified in the Lease to which this program is attached (the "Project") in complying with their respective obligations to give minority and women-owned business enterprises and minority group members and women opportunity for meaningful participation on contracts entered into in connection with the Project, and to permit BPCA to carry out its statutory obligations in connection with the construction, management and operation of real estate development projects at Battery Park City.

1. Definitions. As used in this Program, the following terms shall have the following respective meanings:

Approved MBE Contract: each Contract between Tenant or its Contractors and a Certified MBE which has been entered into in accordance with this Program.

Approved WBE Contract: each Contract between Tenant or its Contractors and a Certified WBE which has been entered into in accordance with this Program.

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[i] **Pursuant to Section 317 of the Executive Law, Section 1974d of the Public Authorities Law is to be construed as if subdivisions 5,6,7 & 8 of section 313 and section 316 of the Executive Law were fully set forth therein and are made applicable only to complaints of violations occurring on or after September 1,1988.**

Certified Business: A business certified as a minority or women-owned business enterprise by the Division, or such other New York State agency or department authorized to make such certification.

Construction of the Project: All work occurring on the Battery Park City site in connection with the development, design, construction and initial occupancy of the Project.

Contract: as defined in Section 2.

Contract Value: The sum of the MBE Contract Value and the WBE Contract Value.

Director: The Director or the Executive Director of the Division.

Directory: The directory of certified businesses prepared by the Director, for use in the implementation of this Program

Division: The Division of Minority and Women's Business Development of the New York State Department of Economic Development.

Executive Law: The New York State Executive Law.

Lease: The Agreement of Lease, of even date herewith, between BPCA and Tenant, as amended and supplemented from time to time.

MBE or WBE Contract Value: The total contract price of all work let to MBEs or WBEs by Tenant or its Contractors pursuant to Approved MBE or Approved WBE Contracts, less the total contract price of all work let to MBEs or WBEs by other MBEs and/or WBEs, provided that (a) where an MBE or WBE subcontracts (other than through supply contracts) more than 50 percent (50%) of its work, the contract price of the work let to such MBE or WBE shall be deemed to equal the excess, if any, of the work let to such MBE or WBE over the contract price of the work subcontracted by such MBE or WBE, (b) where materials are purchased from an MBE or WBE which acts merely as a conduit for a supplier or distributor of goods manufactured or produced by a non-MBE or non-WBE, the price paid by the MBE or WBE to the supplier, distributor, manufacturer or producer shall be deducted from such total contract price and (c) where a contractor or subcontractor is a joint venture including

one or more MBEs or WBEs as joint venture partners, such joint venture shall be treated as an MBE or WBE only to the extent of the percentage of the MBEs or WBEs interest in the joint venture. In any event, MBE/WBE Contract Value shall include only monies actually paid to MBEs or WBEs by Tenant or its Contractors.

Minority or Women's Workforce Participation: The percentage of person-hours of training (subject to the provisions of Section 3(c) below) and employment of Minority Group Members or women workers (including supervisory personnel) in the total workforce used by Tenant and its Contractors in the Construction of the Project.

Minority Group Member: A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:

(1) Black persons having origins in any of the Black African racial groups;

(2) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race;

(3) Native American or Alaskan native persons having origins in any of the original peoples of North America; or

(4) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

Minority-Owned Business Enterprise or MBE: A business enterprise, including a sole proprietorship, partnership, limited liability company, or corporation that is:

(1) at least 51 percent owned by one or more Minority Group Members;

(2) an enterprise in which such minority ownership is real, substantial and continuing;

(3) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and

(4) an enterprise authorized to do business in this State and is independently owned and operated.

Public Authorities Law: The New York State Public Authorities Law

Subcontract: an agreement providing for a total expenditure in excess of Twenty-Five Thousand Dollars ($25,000) for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contractor and any individual or business enterprise, including a sole proprietorship, partnership, limited liability company, corporation, or not-for-profit corporation, in which a portion of a contractor's obligation is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design or real property or improvements thereon for the beneficial use of the contractor.

Public Authorities Law: The New York State Public Authorities Law.

Total Development Costs: all monies expended by, or on behalf of, Tenant in connection with the development, design, construction and initial occupancy of the Project, including the total contract price of all Contracts awarded by Tenant (a) for the furnishing of labor, materials and services for inclusion in the Project, plus the cost of all general conditions work applicable to the Project and not included in such Contracts, and (b) for non-construction services, including architectural, engineering, accounting, legal and technical consultant services, rendered in connection with the development, design, construction and initial

occupancy of the Project. Total Development Costs shall include but not be limited to costs for: demolition and excavation, general contractor's or construction management fees (except for such fees payable to Tenant, an affiliate of Tenant, or _____), interim management, site work and landscaping, installation and hook-ups to utilities and infrastructure, leasehold improvements in preparation for initial occupancy of the Project by tenants, leasing commissions and other lease-up expenses, pre-opening and marketing expenses and public and other civic improvements to be completed by Tenant pursuant to the Lease, except costs pursuant to contracts let to contractors with less than three employees. Total Development Costs shall not include monies expended by, or on behalf of, Tenant for the following: letter of credit fees, title insurance fees and charges, appraisal costs, developer's overhead and fees, fees paid to Tenant or an affiliate of Tenant, mortgage interest, debt service, mortgage brokerage commissions, commitment and other mortgage fees and charges, mortgage recording taxes and other government fees and taxes, costs of administering this Program, insurance premiums and Rental and all other sums and charges paid to or on behalf of BPCA pursuant to the Lease or otherwise with respect to the Project.

Women-owned Business Enterprise or WBE: A business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

(1) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;

(2) an enterprise in which the ownership interest of such women is real, substantial and continuing;

(3) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and

(4) an enterprise authorized to do business in this State and which is independently owned and operated.

2. Compliance with Lease and Contract Obligations.

(a) Tenant shall (i) comply with all of its non-discrimination and affirmative action obligations as set forth in the Lease, and (ii) use its commercially reasonable best efforts to cause each of its Contractors to comply with all of such Contractor's non-discrimination and affirmative action obligations as set forth in the Lease and construction contract or other instrument (collectively, "Contract") pursuant to which such Contractor furnishes materials or services for the Project.

(b) Compliance by Contractor, or by Tenant when it enters into a contract, with the affirmative action and non-discrimination obligations relating to opportunities for participation on contracts by MBEs and WBEs, as set forth in this Exhibit D, or in the Lease, or Contract, shall, as required by Section 317 of the Executive Law, be determined in accordance with the provisions of Section 313, subsections 5,6,7, & 8 and Section 316 of the Executive Law, as same may be amended from time to time[ii] and rules or

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[ii] **N.Y. State Executive Law:**
Section 313....

5. Where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular state contract, a contractor may file a written application with the contracting agency requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority and women-owned business enterprises located in the region in which the state contract is to be performed, the total dollar value of the state contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting agency determines there is not a reasonable availability of contractors on the list of certified business to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the contracting agency shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of minority and women-owned businesses located outsider the region in which the contract is to be performed to perform the state contract.

6. For purposes of determining a contractor's good faith effort to comply with the requirements of this section or to be entitled to a waiver therefrom the contracting agency shall consider:

(a) whether the contractor has advertised in general circulation media, trade association publications, and minority-focus and women-focus media and, in such event, (i) whether or not

certified minority or women-owned businesses which have been solicited by the contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

(ii) whether certified businesses which have been solicited by the contractor have responded in a timely fashion to the contractor 's solicitations for timely competitive bid quotations prior to the contracting agency's bid date; and

(b) whether there has been written notification to appropriate certified businesses that appear in the directory of certified businesses prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

(c) whether the contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

7. In the event that a contracting agency fails or refuses to issue a waiver to a contractor as requested within twenty days after having made application therefor pursuant to subdivision five of this section or if the contracting agency denies such application, in whole or in part, the contractor may file a complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contractor's complaint together with a demand for relief. The contractor shall serve a copy of such complaint upon the contracting agency by personal service or by certified mail, return receipt requested. The contracting agency shall be afforded an opportunity to respond to such complaint in writing.

8. If, after the review of a contractor's minority and women owned business utilization plan or review of a periodic compliance report and after such contractor has been afforded an opportunity to respond to a notice of deficiency issued by the contracting agency in connection therewith, it appears that a contractor is failing or refusing to comply with the minority and women-owned business participation requirements as set forth in the state contract and where no waiver from such requirements has been granted, the contracting agency may file a written complaint with the director pursuant to section three hundred sixteen of this article setting forth the facts and circumstances giving rise to the contracting agency's complaint together with a demand for relief. The contracting agency shall serve a copy of such complaint upon the contractor by personal service or by certified mail, return receipt requested. The contractor shall be afforded an opportunity to respond to such complaint in writing..

Section 316 Enforcement

Upon receipt by the director of a complaint by a contracting agency that a contractor has violated the provisions of a state contract which have been included to comply with the provisions of this article or of a contractor that a contracting agency has violated such provisions or has failed or refused to issue a waiver where one has been applied for pursuant to subdivision five of section three hundred thirteen of this article or has denied such application, the director shall attempt to resolve the matter giving rise to such complaint. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the director shall refer the matter, within thirty days of the receipt of the complaint, to the American Arbitration Association for proceeding thereon. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the director his or her award regarding the alleged violation of the contract and recommendations regarding the imposition of sanctions, fines or penalties. The director shall either: (a) adopt the recommendation of the arbitrator; or (b) determine that no sanctions, fines or penalties should be imposed; or (c) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty The director, within ten days of receipt of the arbitrator's award and recommendations, shall file a determination of such matter and shall cause a copy of such determination along with a copy of this article to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator shall be final and may only be vacated or modified as provided in article seventy-five of the civil practice law and rules upon an application made within

regulations promulgated therefor with the same force and effect as if the Contract were a "State Contract" as defined in Section 310 of the Executive Law.

(c) In its Contracts with Contractors (except those for which exemptions or waivers apply pursuant to the terms of this Agreement or with three or fewer employees), Tenant agrees that it will require that each Contractor, as a condition of the Contract, (i) be bound by the above referenced Executive Law provisions, and (ii) that Contractor's compliance or non-compliance with its MBE and WBE affirmative action and non-discrimination obligations. as set forth in the Contract will be determined by BPCA, and that solely for the purpose of compliance with the said provisions of the Executive Law, BPCA shall be deemed to be the "Contracting Agency" as that term is used in such provisions of the Executive Law.

3. Minority and Women Workforce Participation.

(a) Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors (except those for which exemptions or waivers apply pursuant to the terms of this Program or with three or fewer employees), to promote the employment of Minority Group Members and women as workers in the Construction of the Project, provided that such obligation shall be deemed to have been fulfilled when (i) the Minority Workforce Participation equals 30% of the total person-hours of training and employment used in the construction of the Project, and (ii) the Women Workforce Participation equals five percent (5%) of the total person-hours of training and employment used in the Construction of the Project. Tenant and BPCA have, after reviewing the work to be included in the Project and the qualifications and availability of Minority and women workers for participation in such work, determined that the percentages set forth above and in such Schedule are reasonable and attainable. In further fulfillment of its obligations hereunder, Tenant shall also comply with the procedures set forth in Section 4 hereof.

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the time provided by section seventy-five hundred eleven of the civil practice law and rules. The determination of the director as to the imposition of any fines, sanctions or penalties shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

(b) In order to assist Tenant in carrying out the provisions of Section 3(a) above, Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, participate in on-the-job training program or programs approved by the NYS Department of Labor, or such other or successor programs as shall be approved by the New York State Labor Law, as amended.

(c) In order for the non-working training hours of apprentices and trainees to be counted in meeting the percentages set forth in Section 3(a) above, such apprentices and trainees must be employed by the Tenant or Contractor during the training period, and the Tenant or Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities.

(d) Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors employing more than three employees to, submit to BPCA daily reports on the composition of the workforce on the Project, monthly payroll reports, a monthly summary payroll report on a form approved by BPCA, broken down by person-hours and by ethnic and gender makeup and such other or more frequent reports regarding workforce composition as BPCA shall require. Monthly payroll and summary reports are to be submitted by the 10th day of the month following the period covered by such report.

(e) Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, review at least semiannually, Tenant's non-discrimination obligations and obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.

4. Minority and Women Workforce Procedures. Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, provide and maintain a working environment free of harassment, intimidation and coercion. Tenant shall ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out Tenant's non-discrimination obligations and its obligation to maintain such a working

environment. In addition, Tenant shall, and shall cause its Contractors to, observe the following procedures throughout the Construction Period:

(a) Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, make a search for Minorities and women for employment in the Construction of the Project.

(b) Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, encourage Minority and women employees to recruit other Minorities and women for employment on the Project.

(c) Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, fulfill its/their Minority and women workforce participation obligations under Section 3(a) above in a substantially uniform manner throughout the Construction Period.

(d) Tenant shall not, and shall use its commercially reasonable best efforts to cause its Contractors not to, transfer Minority and women employees from employer to employer or project to project for the purpose of meeting Tenant's and Contractors' obligations hereunder.

(e) Tenant shall meet with BPCA and such other persons as BPCA may invite, on a periodic basis as required by BPCA, to discuss issues relating to Minority and Women Workforce Participation. At such meetings Tenant shall report on the names of its Contractors then engaged in construction on the Project or which within sixty (60) days are scheduled to be engaged in construction on the Project, on the nature of the work and anticipated construction schedule of such Contractors, on the anticipated hiring needs of such Contractors, on the names of the responsible foremen for each of the construction trades directly employed by such Contractors, and such other information reasonably requested by BPCA that will promote the employment of Minorities and women. Tenant shall use its commercially reasonable best efforts to obtain the above information from its Contractors and shall, upon BPCA's request, use its commercially reasonable best efforts to cause its Contractors to attend said meetings and provide the above information.

(f) Tenant shall monitor all of its Contractors to ensure that the foregoing obligations are complied with by each Contractor.

(g) Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, consult with BPCA regarding fulfillment of its obligations hereunder prior to solicitation for any contractors, subcontractors, or consultant.

(h) In fulfillment of the obligations set forth in this Section 4, Tenant shall furnish BPCA, at its request, documentary evidence of its efforts.

5. Determination of MBE and WBE Eligibility. A business enterprise which is a Certified MBE or a Certified WBE is an eligible MBE or WBE and shall remain an eligible MBE or WBE for so long as such business continues to be a Certified MBE or Certified WBE. Certification as an MBE or WBE shall be the sole and conclusive determination of eligibility for the purposes of this Program. BPCA will rely on a determination with respect to MBE or WBE certification of, or failure to certify, a business enterprise as an eligible MBE or WBE made by the Division or its successor or other designated New York State certifying agency, office or authority pursuant Article 15A of the New York State Executive Law, or any guidelines or regulations issued thereunder, or any other or successor applicable law, or regulations or executive order.

6. MBE and WBE Participation. Tenant shall, and when contemplated by the applicable Contract bid package, shall use its commercially reasonable best efforts to cause its Contractors to, provide meaningful participation in Contracts for the Project to MBEs and WBEs, provided that such obligation shall be deemed to have been fulfilled when the aggregate Contract Value of Approved MBE Contracts and Approved WBE Contracts shall equal thirty percent (30%) of Total Development Costs. In determining the aggregate Contract Value of Approved MBE and WBE Contracts, an amount equal to the Contract Value of all contracts for which BPCA has issued waivers to Tenant or its Contractors

pursuant to Section 313, subsections 5,6,7 & 8, and Section 316 of the Executive Law, shall be included as part of the aggregate Contract Value for the purpose of fulfillment of Tenant's and Contractors' obligation under this Program, including obligations under Section 6(a), below and all other provisions relating to Tenant's and Contractors' MBE and WBE obligations as may be set forth herein or in the Schedules attached hereto.

In order to fulfill its obligations hereunder:

(a) Tenant shall, during the Construction Period (which shall mean the period commencing at the Commencement Date and terminating at Substantial Completion of the Building, as such terms are defined in the Lease), enter into, or cause its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts having an aggregate Contract Value of at least twenty-five percent (25%) of Total Development Costs; such aggregate Contract Value shall consist of an aggregate MBE Contract Value of at least twenty percent (20%) of Total Development Costs and an aggregate WBE Contract Value of at least five percent (5%) of Total Development Costs. After reviewing the work to be included in the Project, Tenant and BPCA have identified portions of such work for which, in their judgment, qualified MBEs and WBEs are expected to be available and have agreed upon such portions of the work and the estimated value thereof. During the Construction Period, in partial fulfillment of its obligations hereunder, Tenant presently expects to enter into, or cause its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts in accordance with the procedures set forth in Section 7 below.

(b) In further fulfillment of its obligations under this Section 6, Tenant shall, throughout the Construction Period, (i) conduct a thorough and diligent search for qualified MBEs and WBEs to carry out additional portions of the Project, (ii) review the qualifications of each MBE and WBE suggested to Tenant by BPCA, and (iii) enter into, or cause its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts with all qualified and available MBEs and WBEs, respectively, in accordance with and subject to the procedures set forth in Section 7 below.

7. MBE/WBE Participation Procedures. Tenant shall observe the following procedures throughout the Construction Period and until such time as Tenant has fulfilled its obligations under Section 6 above:

(a) Tenant shall advise BPCA promptly of Tenant's proposed design and construction schedule for the Project and afford BPCA's Affirmative Action Officer a reasonable opportunity to become familiar with the proposed scope, nature and scheduling of Tenant's major Contracts. As promptly as practicable, but in any event at least ten (10) but not more than ninety (90) days prior to issuing requests for proposals or invitations to bid for any Contracts, Tenant shall furnish BPCA with a projected schedule which shall include a detailed description (the "Contract Schedule") of such Contracts, broken down by trade. Tenant will update or amend the Contract Schedule as required to reflect any changes in Tenant's proposed Contracts and will promptly notify BPCA thereof. The Contract Schedule will set forth the anticipated times at which invitations to bid or requests for proposals are to be issued for work in each trade, the scope of such work, and the estimated contract value or range of values of such work or purchases. In formulating the Contract Schedule, Tenant will confer with BPCA to identify those portions of the work or purchases which can be divided into separate contract packages or which can be subcontracted, so as to maximize opportunities for participation in the work by MBEs and WBEs. To the extent practicable, Tenant shall prepare separate contract packages for such work which shall be bid and let separately by Tenant or which shall be subcontracted separately by Tenant's Contractors, and shall not be bid or let as part of any other work. Tenant shall, at least ten (10) but not more than ninety (90) days prior to the issuance of an invitation or request to bid for each individual contract, furnish BPCA with written notice thereof.

(b) BPCA will review the Contract Schedule as promptly as practicable, and will provide to Tenant a list of eligible MBEs and WBEs for all or portions of the work. Tenant shall then promptly notify BPCA in writing that all MBEs and WBEs on such list have been

contacted and of any business enterprise not on such list which claims to be an MBE or WBE and has expressed an interest in bidding on the work. As promptly as practicable after receipt of Tenant's notice, BPCA will advise Tenant in writing whether the business enterprises which have expressed an interest in the work, but were not included on the list of MBEs and WBEs furnished to Tenant by BPCA, are eligible MBEs or WBEs, provided that BPCA shall have no obligation to advise Tenant whether any business enterprise is an eligible MBE or WBE until a State Certification Determination has been made with respect to such business enterprise.

(c) Concurrently, BPCA and Tenant will review the eligible MBEs and WBEs to determine the extent to which such MBEs and WBEs are qualified and available to perform all or portions of the work identified in the contract packages. In general, an MBE or WBE will be deemed to be qualified to perform work if its personnel have successfully performed work of a similar nature in the past and demonstrate the present ability, after giving effect to the assistance which Tenant will provide under Section 7(e) below, to organize, supervise and perform work of the kind and quality contemplated for the Project. In determining whether an MBE or WBE meets these standards, BPCA and Tenant shall consider, experience in the trade, technical competence, organizational and supervisory ability and general management capacity. An MBE or WBE shall not be considered unqualified to perform work on the Project (i) because such MBE or WBE (A) cannot obtain bonding or (B) cannot obtain commercial credit or cannot obtain such credit on normal terms or (ii) solely because such MBE or WBE (A) does not have the capacity to perform work of the nature and scope required without the assistance to be made available by Tenant under Section 7(e) below or (B) has not previously performed work equal in scope or magnitude to such work. In the event that BPCA and Tenant cannot agree on whether an eligible MBE or WBE is qualified and available hereunder, BPCA's determination on those issues shall be final and conclusive for the purposes of this Program, unless Tenant shall, within ten (10)

days after written notice of such determination is given by BPCA, request that the matter be determined by arbitration pursuant to Section 7(f) below.

(d) Tenant shall invite all MBEs and WBEs found qualified and available hereunder (including those MBEs and WBEs on the list provided by BPCA pursuant to Section 7(b) above) to submit proposals for work required to be performed under Tenant's contract packages (including both contracts and Subcontracts). At least three (3) days prior to any award of any Contract by Tenant, Tenant shall notify BPCA in writing of all responses or bids in connection with Tenant's requests for proposals or invitations to bid.

(e) Tenant will provide financial assistance to an MBE or WBE to which a contract or Subcontract is to be awarded and which is unable to obtain credit or financing on normal terms by (i) guaranteeing payment to suppliers, subject to obtaining an appropriate security interest in the materials paid for, (ii) making progress payments for work performed more frequently than the normal one-month cycle (but no more often than bi-weekly), and (iii) paying for reasonable mobilization costs in advance of the commencement of construction, subject to obtaining an appropriate security interest in any materials or equipment paid for with such advances and mobilization costs. Tenant shall also waive bonds where MBEs and WBEs are unable to obtain the same, shall make available to MBEs and WBEs technical assistance to conform to the method of construction of the Project, shall (except for trades whose work is subject to controlled inspections or safety laws or regulations) provide supervision consistent with the MBE's and WBE's experience and capacity and shall conduct periodic job meetings with each MBE and WBE at reasonable intervals to review the progress of such MBE's and WBE's job performance and suggest appropriate action to remedy any deficiency in such performance. Tenant shall offer to provide the foregoing assistance to MBEs and WBEs prior to their submission of bid proposals and, wherever practicable, at the time of Tenant's request for such proposals.

(f) Except as shall be otherwise provided for in Section 316 of the Executive Law, as to Contractors, in the event that Tenant shall demand arbitration as to the question of the

qualifications or availability of any MBE or WBE pursuant to Section 7(c) above, the matter shall be determined in the County of New York by three arbitrators, one of whom shall be appointed by BPCA, one by Tenant and the third by agreement of the two arbitrators appointed by the parties (or failing such agreement, the third arbitrator shall be appointed by the American Arbitration Association), in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided that, anything to the contrary contained in such rules notwithstanding, (i) Tenant shall, together with such demand for arbitration, submit in writing to such arbitrators (when selected) and BPCA its reasons for its disagreement with BPCA's determination on such question, (ii) BPCA shall, within five (5) days after its receipt of such written statement from Tenant, submit to such arbitrators and Tenant the reasons for such challenged determination, and (iii) such arbitrators shall, after such hearing, if any, as they may deem appropriate, render their decision within ten (10) days after receipt of such written statement from BPCA. Such decision shall be conclusive and final for all purposes of this Program, provided that, anything to the contrary contained herein notwithstanding, any decision that an eligible MBE or WBE is or is not available or qualified to perform work on a particular Contract shall not preclude a later determination by Tenant, BPCA or the arbitrators to the contrary in light of changed or different circumstances. Tenant and BPCA shall each bear its own costs and attorneys fees in connection with such arbitration and shall share equally the costs of such arbitration (including the arbitrator's fees).

(g) Tenant shall maintain complete and accurate written records of (i) its efforts to identify and contract with MBEs and WBEs, (ii) the reasons, if applicable, for any determination by Tenant that an MBE or WBE is not qualified or available to perform work on the Project, (iii) the assistance offered or provided to MBEs and WBEs in accordance with Section 7(e) above, and (iv) Contracts, including Approved MBE Contracts and Approved WBE Contracts, awarded on the Project, which records shall contain, without limitation, the dollar value of such awards and a description of the scope of the work

awarded. Such records shall be furnished to BPCA at such times as BPCA may reasonably request.

(h) Prior to the issuance by Tenant of any letter of intent to a Contractor, Tenant shall provide to BPCA a written list of specific affirmative action measures which the Contractor has agreed to undertake in performing work on the Project, including a list of MBEs and WBEs to which Subcontracts are to be let.

(i) Tenant shall not enter into any Contract, nor permit its Contractors to enter into any Contract, unless Tenant has certified to BPCA in writing that such Contract has been awarded in accordance with the requirements of this Program and BPCA has approved, in writing, the award of such Contract. BPCA shall advise Tenant within five (5) business days of receipt of any such proposed Contract and Tenant's written certification whether or not BPCA has approved such Contract and shall, if such Contract has not been approved, advise Tenant of BPCA's reasons for disapproval. In the event that BPCA shall fail to advise Tenant within such five (5) business day period that a proposed Contract has been approved or disapproved hereunder, BPCA shall be deemed to have approved such Contract for purposes of this Section 7(i). After award of a Contract, Tenant shall not enter into, or permit its Contractors to enter into, any modification or amendment of such Contract which will materially reduce the scope of work to be performed by an MBE or WBE or materially diminish the Contract Price of any Contract (including Subcontracts) awarded to an MBE or WBE without the prior written consent of BPCA, which will not be unreasonably withheld, conditioned or delayed. Each Contract entered into by Tenant shall (i) contain such non-discrimination provisions as are required by the Lease, (ii) require the Contractor thereunder to comply with the applicable Minority and Women Workforce Requirements of Section 3, and the procedures set forth in Section 4, of this Program and (iii) require such Contractor to comply with the applicable provisions of Sections 6 and 7 of this Program with respect to any Contracts awarded by such Contractor. Tenant shall promptly furnish BPCA with the name of each party to whom Tenant (or its Contractors) awards a Contract, together with, in

the case of each Approved MBE Contract or Approved WBE Contract, a summary of the scope of services to be performed under such Contract and the Contract price thereof, as the same may be amended from time to time.

(j) Tenant shall, and shall cause its Contractors to, submit to BPCA within five (5) days after execution of any Approved MBE Contract or Approved WBE Contract or amendment thereto between Tenant or its Contractor and an MBE or WBE, a copy of such contract or amendment. Within thirty (30) days after substantial completion of work done pursuant to any such contract as amended, Tenant shall submit to BPCA sworn affidavits as described hereafter, for the purpose of determining Tenant's fulfillment of its obligations under Section 6 above. The affidavits required by this subsection shall consist of one affidavit of a duly authorized officer of Tenant or its Contractor, as the case may be, and one affidavit of a duly authorized officer of the MBE or WBE, as the case may be, attesting to the following information: (i) identifying the contract and describing the scope of services required thereunder; (ii) that the MBE or WBE is, or is believed to be by Tenant or its Contractor, a bona fide MBE or WBE as defined by the State of New York pursuant to Article 15A of the New York State Executive Law and any guidelines or regulations issued thereunder; (iii) that the MBE or WBE actually performed the services described pursuant to clause 7(j)(i) above; (iv) the total compensation paid or received for the performance of the services described pursuant to clause 7(j)(i) above and whether such amount represents all sums due and owing and if not, the reason for any unpaid sums due and owing; (v) that such officer's statements pursuant to clauses 7(j)(i), (ii), (iii), and (iv) above are made with full knowledge that they will be used and relied upon by one or more public servants in the performance of their official duties; and (vi) that such officer is familiar with the provisions of Article 210 of the Penal Law relating to false sworn statements made to public officials in their official capacity. In the event Tenant is unable to obtain an affidavit from a duly authorized officer of the MBE or WBE, then BPCA may in its reasonable discretion accept canceled checks, and/or other documentation in lieu of such affidavit.

(k) Tenant shall at the execution of this Agreement and from time to time thereafter designate an affirmative action officer, satisfactory to BPCA, to represent Tenant in all matters relating to this Program and advise BPCA in writing of such designee. BPCA hereby approves _____ as Tenant's affirmative action officer.

(l) Tenant shall, within ninety (90) days after Substantial Completion of the Building, provide a statement to BPCA of Tenant's Total Development Costs, certified by Tenant and a Certified Public Accountant, listing in reasonable detail the components thereof. Within ninety (90) days after receipt of such statement, BPCA may cause a firm of independent Certified Public Accountants selected by BPCA to examine and audit the records, account books and other data of Tenant used as the basis for such certified statement, and be informed as to the same by a representative of Tenant, all of which Tenant shall make available to BPCA. If such audit shall establish that the Total Development Costs were understated, then the Total Development Costs shall be increased accordingly. The audit, if any, shall be conducted at the expense of BPCA unless it shall be established that Tenant understated the Total Development Costs by more than two percent (2%), in which case Tenant shall pay the reasonable cost of BPCA's audit. If any items of Total Development Costs are not yet determined at the time of Substantial Completion of the Buildings (for example, costs of tenant improvements not yet completed or paid for), Tenant may make one or more supplemental submissions of such additional Total Development Cost items, and such items shall be subject to audit by BPCA as provided in this Section 7(l).

8. Subsequent Construction and Protect Management. (a) After the Construction Period, in connection with all subsequent construction work on the Project, including interior improvements, alterations, capital improvements, structural repairs, Restoration (as defined in the Lease) and replacement of, or additions to, the Project undertaken by Tenant (including its successors and permitted assigns), whether on its own behalf or on behalf of

its subtenants or other occupants (collectively, "Subsequent Work"), Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, provide meaningful participation to qualified and available MBEs and WBEs which submit competitive proposals for such work. Additionally, Tenant shall provide meaningful participation in all service and management agreements, agreements for the purchase of goods and services and other agreements relating to the operation of the Project (collectively, "Operating Agreements") to MBEs and WBEs. Tenant and BPCA hereby agree that the annual goal for MBE and WBE participation in Subsequent Work and Operating Agreements is fifteen percent (15%) of the total contract prices thereof, inclusive of the contract value of any contract for which a waiver has been obtained, in compliance with applicable provision of the Executive Law. In order to achieve the goal established under this Section 8(a), Tenant shall, and shall use its commercially reasonable best efforts to cause its Contractors to, (i) conduct a thorough and diligent search for qualified MBEs and WBEs, (ii) review the qualifications of each MBE and WBE suggested to Tenant by BPCA and (iii) afford an opportunity to submit proposals for all Subsequent Work and Operating Agreements to those MBEs and WBEs found qualified. Prior to the end of the Construction Period, Tenant shall meet with BPCA as reasonably required by BPCA to review the operation and status of this Program and develop a plan for meeting the MBE and WBE participation goals set forth above. Thereafter, Tenant shall meet with BPCA on a periodic basis as reasonably required by BPCA to review the operation and status of this Program and such plan and identify measures to be taken by Tenant to ensure that the MBE and WBE participation goals are met. In addition, BPCA may require Tenant to comply with procedures similar to those set forth in Section 7 above in the event that Tenant fails to meet the MBE and WBE participation goals. Tenant shall submit quarterly reports to BPCA setting forth the nature and scope of Subsequent Work carried out and Operating Agreements in effect during the preceding quarter, all efforts made by Tenant and its Contractors to employ qualified MBEs and WBEs to perform the Subsequent Work and participate in the Operating Agreements

and all contracts let to MBEs and WBEs. The obligations under this Section 8(a) shall continue until BPCA finds that this Program is no longer necessary to give minority and women-owned business enterprises opportunity for meaningful participation on contracts in connection with the construction, operation and maintenance of the Project.

(b) In connection with Subsequent Work and the management and operation of the Project, Tenant (including its successors and permitted assigns) shall, and shall require such persons as it may employ or contract with to manage and operate the Project (collectively, the "Operator"), to:

(i) make good faith efforts to include Minority group members and women in such work in at least the proportion that Minorities and women are available for such work in the New York City workforce;

(ii) in the event of lay-offs, make good faith efforts to maintain the same proportion of Minority and women employees in Tenant's (or Operator's, as the case may be) workforce as existed immediately prior to commencement of such lay-offs; and

(iii) meet with BPCA on a periodic basis as reasonably required by BPCA to review Tenant's and Operator's compliance with this Section 8(b) and to determine specific opportunities where Minority and women workforce participation in Subsequent Work and management and operation of the Project might be encouraged.

9. On-the-Job Training. Tenant shall cause its construction manager for the Project to conduct an on-the-job training program for individuals seeking career opportunities in the construction business. The program shall seek to recruit qualifiable minority, women and local community residents for entry level management positions in the construction business. The program will have a duration of at least eighteen months, during which interns shall receive on-the-job training in the following disciplines: (1) monitoring trade contractors' mobilization and performance; (2) coordinating the Project field force; (3) scheduling contractors' daily workforces; and (4) coordinating materials and equipment.

10. Minority and Women Business Enterprise Workshops. Tenant shall cause its Construction manager for the Project, in cooperation with BPCA, to schedule a series of workshops in an attempt to maximize MBE and WBE participation in the construction of the Project. The primary objective of such workshops is to schedule pre-bid meetings and provide assistance to MBEs and WBEs interested in bidding in their respective trades and to stimulate potential joint ventures, subcontracts and supply and vendor opportunities. The workshops shall include the use of private and public sector business resources to provide construction-related and office assistance to MBEs and WBEs in the following categories: (1) contract procurement; (2) technical matters; (3)estimating; (4) payment requisition preparation; (5) personnel evaluation; (6) computer technology; and (6) new business opportunities;

11. Non-Compliance.

(a) Tenant acknowledges that the percentages of Minority and women Workforce Participation set forth in Section 3(a) above represent reasonable estimates of Tenant's ability to provide meaningful participation to Minority and women workers and MBEs and WBEs, respectively, during the Construction Period. Tenant recognizes and acknowledges that the purpose of this Program and of Tenant's and BPCA's undertakings hereunder is to fulfill BPCA's and Tenant's statutory obligations in connection with the construction, management and operation of the Project by affording Minority and women workers and MBEs and WBEs an opportunity to participate in the Construction of, and Contracts for, the Project, to the end that such Minority and women workers and MBEs and WBEs can share in economic benefits and also can gain necessary training, experience and other benefits, including increased financial resources, which will facilitate their full participation in the construction industry and management and operation of projects hereafter. Tenant recognizes and acknowledges that its failure to achieve the goals set forth

in Sections 3 and 6 above, or comply with the procedures set forth in Sections 4 and 7 above, with respect to the utilization of Minority and women workers and MBEs and WBEs in the Construction of, and Contracts for, the Project may result in damage to BPCA's affirmative action programs and policies, as well as to Minority and women workers and MBEs and WBEs who would be denied an opportunity to share in the economic benefits provided by the construction work and would be denied the training, experience and other benefits which participation in the Project would provide. Tenant further recognizes and acknowledges that such damage cannot be readily quantified, but that the amounts set forth below are reasonable in light of the magnitude of the harm which would result from non-compliance by it hereunder, other than to a de minimis extent, and that payments made for the purposes of the Minority Workers Training Fund and Women Workers Training Fund and the MBE Assistance Fund and WBE Assistance Fund, referred to in Section 11(e) below, are a reasonable means of compensating for that harm.

(b) In the case of Tenant's material default in achieving the goals set forth in Section 3 or 6 above, or in meeting the requirements set forth in Section 4 or 7 above, with respect to the utilization of Minority and women workers and MBEs and WBEs in the Construction of, and Contracts for, the Project during the Construction Period (other than defaults resulting directly from any order of judicial authorities having jurisdiction over the Project or this Program), Tenant shall pay to BPCA compensatory damages, in addition to any other remedies available to BPCA under this Program, the Lease or in law or equity, in the following liquidated amounts:

(i) in the event that Tenant fails to employ, or use its commercially reasonable best efforts to cause its Contractors to employ, Minority and women workers in any trade group equal to the percentage set forth in Section 3(a) above, the product of (A) the aggregate number of person-hours of training and employment of Minority and women workers which would have resulted from achievement of the percentage set forth in such Schedule

for such trade group less the sum of the actual Minority Workforce Participation and Women Workforce Participation achieved in the construction of the Project by Tenant or its Contractors in such trade group, multiplied by (B) fifty percent (50%) of the average hourly wage (including fringe benefits) paid to journey-level workers employed in such trade group in the Construction of the Project;

(ii) in the event that Tenant fails to employ, or use its commercially reasonable best efforts to cause its Contractors to employ, women workers equal to the percentage set forth in Section 3(a) above, the product of (A) the aggregate number of person-hours of training and employment of women workers which would have resulted from achievement of the percentage set forth in such Section less the sum of the actual Women Workforce Participation achieved in the construction of the Project by Tenant or its Contractors, multiplied by (B) fifty percent (50%) of the average hourly wage (including fringe benefits) paid to all journey-level workers employed in the Construction of the Project;

(iii) in the event that, at any time during the Construction Period, Tenant fails to enter into, or use its commercially reasonable best efforts to cause its Contractors to enter into, an Approved MBE Contract or Approved WBE Contract for work on the Project with any eligible MBE or WBE found to be qualified and available to perform such work for at the lowest price bid by other qualified and available contractors, in accordance with and subject to the provisions of Sections 5, 6 and 7 above, twenty-five percent (25%) of the Contract price at which such MBE or WBE was willing to perform such work, but in no event less than Twelve Thousand, Five Hundred Dollars ($12,500) for each such Contract, provided that if such failure is either willful or a result of a pattern of continuing violation of Tenant's obligations

hereunder after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal fifty percent (50%) of such Contract price, but in no event less than Twenty-Five Thousand Dollars ($25,000) for each such Contract;

(iv) in the event that Tenant fails to enter into, or use its commercially reasonable best efforts to its Contractors to enter into, Approved MBE Contracts and Approved WBE Contracts having an aggregate Contract Value at least equal to twenty-five percent (25%) of Total Development Costs as provided in Section 6(a) above ("Specified Amount"), twenty-five percent (25%) of the amount by which the Specified Amount exceeds the aggregate Contract Value of Approved MBE Contracts and Approved WBE Contracts actually entered into by Tenant and its Contractors, including the value of contracts for which waivers have been obtained in accordance with applicable Executive Law provisions, during the Construction Period, provided that if such failure is either willful or a result of a pattern of continuing violation of Tenant's obligations hereunder after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal fifty percent (50%) of the amount by which the Specified Amount exceeds the aggregate Contract Value;

(v) in the event that Tenant fails to enter into, or use its commercially reasonable best efforts to cause its Contractors to enter into, Approved MBE Contracts having an aggregate MBE Contract Value at least equal to twenty percent (20%) of Total Development Costs as provided in Section 6(a) above ("MBE Specified Amount"), twenty-five percent (25%) of the amount by which the MBE Specified Amount exceeds the aggregate MBE Contract Value of Approved MBE Contracts actually entered into by Tenant and its Contractors during the Construction Period, provided that if such failure is

either willful or a result of a pattern of continuing violation of Tenant's obligations hereunder after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal fifty percent (50%) of the amount by which the MBE Specified Amount exceeds the aggregate MBE Contract Value; and

(vi) in the event that Tenant fails to enter into, or use its commercially reasonable best efforts to cause its Contractors to enter into, Approved WBE Contracts having an aggregate WBE Contract Value at least equal to five percent (5%) of Total Development Costs as provided in Section 6(a) above ("WBE Specified Amount"), twenty-five percent (25%) of the amount by which the WBE Specified Amount exceeds the aggregate WBE Contract Value of Approved WBE Contracts actually entered into by Tenant and its Contractors during the Construction Period, provided that if such failure is either willful or a result of a pattern of continuing violation of Tenant's obligations after notice by BPCA to Tenant that BPCA believes such a pattern exists, then such damages shall equal fifty percent (50%) of the amount by which the WBE Specified Amount exceeds the aggregate WBE Contract Value.

(c) Anything to the contrary contained herein notwithstanding, Tenant shall not be liable for damages under paragraph (b)(i) or (b)(ii) of this Section 11 if and to the extent that Tenant can demonstrate (i) that it has fully complied with each and every provision hereof including Section 4(h) above and (ii) that, notwithstanding such efforts, it was unable to employ qualified Minorities or women, as the case may be, in accordance with and subject to the requirements set forth in Sections 3 and 4 of this Program. In addition, Tenant shall not be liable for damages under paragraph (b)(iii), (b)(iv), (b)(v) or (b)(vi) of this Section 11 if and to the extent that Tenant can demonstrate (i) that, subject to de minimis exceptions, it has fully and diligently performed all of its obligations under this Program and diligently

complied with each and every provision hereof and (ii) that, notwithstanding such efforts, it was unable to contract with additional, qualified MBEs or WBEs, as the case may be, in accordance with and subject to the requirements set forth in Sections 5, 6 and 7 of this Program.

(d) Anything to the contrary contained herein notwithstanding, (i) the aggregate damages payable by Tenant pursuant to paragraphs (b)(i) and (b)(ii) of this Section 11 shall in no event exceed five percent (5%) of Total Development Costs and (ii) the aggregate damages payable by Tenant pursuant to paragraphs (b)(iii) through (b)(vi) of this Section 11 shall in no event exceed seven and one-half percent (7 and 1/2%) of Total Development Costs. Tenant shall, in any event, be entitled to credit against any sums payable under paragraphs (b)(iv), (b)(v) and (b)(vi) of this Section 11 all payments made by Tenant pursuant to paragraph (b)(iii) of this Section 11.

(e) Payments made by Tenant under paragraph (b)(i) of this Section 11 shall be deposited in a Minority Workers Training Fund and payments made by Tenant under paragraph (b)(ii) of this Section 11 shall be deposited in a Women Workers Training Fund. The monies in such Funds shall be used by BPCA to provide job training and other assistance to Minority and women workers, respectively, as BPCA shall determine to be useful in enabling such workers to overcome the effects of past discrimination and to participate more fully in the construction industry. Payments made by Tenant under paragraphs (b)(iii) through (b)(vi) of this Section 11 shall be deposited in either an MBE Assistance Fund or WBE Assistance Fund, depending upon whether such payments resulted from a failure to meet requirements regarding MBEs or WBEs. The monies in such Funds shall be used by BPCA to provide such financial, technical and other assistance to MBEs and WBEs, respectively, as BPCA shall determine to be useful in enabling MBEs and WBEs to overcome the effects of past discrimination and to participate more fully in the construction industry.

(f) In the event Tenant fails to fulfill any of its obligations hereunder, BPCA may, in addition to assessing damages as provided in Section 11(b) above, (i) advise Tenant that, except for completion of the Project, Tenant shall be ineligible to participate in any work at Battery Park City and (ii) apply to any court of competent jurisdiction for such declaratory and equitable relief as may be available to BPCA to secure the performance by Tenant of its obligations hereunder.

12. Confidentiality. BPCA acknowledges that the information to be furnished by Tenant hereunder concerning Tenant's Contracts and bidding procedures constitutes information which, if disclosed, could impair present or imminent Contract awards, is maintained for the regulation of Tenant's commercial enterprise and could, if disclosed, cause substantial injury to the competitive position of that enterprise. Accordingly, BPCA will, in accordance with and subject to applicable law, treat such information as confidential and use its best efforts to prevent the unauthorized disclosure thereof, except to the extent that (a) BPCA and Tenant shall agree is necessary in connection with the recruitment of qualified MBEs and WBEs to perform work on the Project, (b) BPCA may determine to use such information, without identifying such individual Contracts, as part of BPCA's overall assessment of the effectiveness of this Program in overcoming the effects of discrimination in the construction industry or (c) is otherwise necessary in connection with the enforcement of this Program in accordance with the provisions hereof.

13. No BPCA Liability. No act of, nor failure to act by, BPCA hereunder shall create or result in any liability on the part of BPCA or any of its members, officers, employees or agents to Tenant or to any other party, or give rise to any claim by Tenant or any other party against BPCA or any of its members, officers, employees or agents, whether for delay, for damages or for any other reason, unless BPCA is found by a court of

competent jurisdiction to have acted arbitrarily or in bad faith in acting or failing to act hereunder.

14. Performance under Lease. No requirement of this Program, nor the assumption or performance by Tenant of any obligation hereunder, shall excuse Tenant from the performance of any of its obligations under the Lease, nor constitute a defense to any claim by BPCA under the Lease, whether for default, rental, damages or otherwise.

15. Persons Bound. Except as may be required elsewhere in this Program, this Program and the Schedules hereto, including any amendments thereto, shall be binding upon and inure to the benefit of Tenant and its respective legal representatives, successors and permitted assigns, including without limitation, any cooperative corporation, condominium association or similar entity for the Buildings. Tenant shall require its immediate successors or assigns to confirm and agree in writing to all terms and conditions of this Program.

16. Additional Requirements. In the event that legislation is enacted or an executive order is issued which authorizes or directs BPCA to carry out additional affirmative action requirements or programs with respect to Minority or women workers or business enterprises owned and operated by Minorities or women, BPCA reserves the right to take such measures as may be necessary or appropriate to implement such requirements or programs.

17. Notices and Addresses.

(a) Any notice or other communication (except as otherwise provided in Section 7(j) above) given by BPCA or Tenant to the other relating to this program shall be in writing and sent by postage prepaid, registered or certified mail, return receipt requested, addressed to the other at the address first set forth in the Lease to which this Exhibit is attached, or delivered personally to the other at such address, and such notice or other

communication shall be deemed given three (3) days after the date of mailing or when so delivered:

If to BPCA, such notices shall be sent to the attention of Vice President, Community Relations/Affirmative Action and if to Tenant a copy shall be sent to the attention of _____.

(b) Either BPCA or Tenant may at any time advise the other of a change in its address or designate a different person to whom notice shall be mailed by giving written notice to the other of such change or designation in the manner provided in this Section 15.

18. Separability and Invalidity. If any provision of this Program shall for any reason be held unenforceable or invalid, neither the enforceability nor the validity of any other provision of this Program shall be affected thereby. In the event that the Program is, in whole or in part, held to be unenforceable or invalid, then Tenant agrees to undertake a program of affirmative action, as directed by BPCA, which program shall not impose obligations on Tenant which are more onerous than those contained herein.

19. Approvals. All approvals and consents to be given by BPCA pursuant to this Program shall be in writing, and Tenant shall not be entitled to rely on any approval or consent which is not in writing.

20. Governing Law. This Program shall be construed and enforced in accordance with the laws of the State of New York.

EXHIBIT L

BATTERY PARK CITY

AFFIRMATIVE FAIR MARKETING PROGRAM FOR SITE 1

This Affirmative Fair Marketing program has been adopted by the Battery Park City Authority ("BPCA") in order to assure that Millennium BPC Development LLC, organized under the laws of the State of New York ("Tenant"), its agents, successors and assigns, comply with their obligations to prevent discrimination on account of race, color, creed, sex or national origin in the rental, sale or other disposition of Tenant's residential and commercial units and related facilities (collectively, "Units") located on that portion of the Battery Park City Development designated as Site 1 and to permit BPCA to promote open, integrated housing and to afford individuals a range of housing or commercial facility choices regardless of race, color, creed, sex or national origin.

This Program is designed to implement BPCA's corporate policy of ensuring that all housing and commercial facilities at Battery Park City afford equal access to, and equal opportunity for, minority persons and families and single women and single parent households headed by women, and that occupancy reflects, to the maximum extent possible, the minority and gender demographic characteristics of the City of New York's population.

1. Definitions. As used in this Program, the following terms shall have the following respective meanings:

Building: As defined in the Lease.

Lease: The Agreement of Lease, of even date herewith, between BPCA and Tenant, as amended and supplemented from time to time.

Minority or Minorities: (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;

(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent, of either Indian or Hispanic culture or origin, regardless of race;

(c) Asian or Pacific Island persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, and

(d) American Indian or Alaskan native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through memberships and participation in tribal associations or community identification.

2. Submission of Affirmative Fair Marketing Plan

Tenant shall submit to BPCA an affirmative fair marketing plan (the "Plan") at least one hundred twenty (12)) days prior to undertaking any marketing activity. For the purposes of this Program "marketing activity" shall include any advertising and/or the solicitation of applications for the Units. No marketing activity shall take place until BPCA shall have approved in writing the Plan. The Plan shall specify all actions which Tenant proposes to take to attract Minorities and women who might not otherwise apply for the Units in the Building. The Plan shall include, intra alia, provisions for: (a) publicizing the availability of the Units to Minorities in Minority media and other Minority outlets; (b) publicizing the availability of the Units to women in women-oriented media and other outlets; (c) maintaining a non-discriminatory hiring policy for marketing staff; (d) instructing all marketing staff and agents in writing and orally in the policies of non-discrimination for fair marketing; (e) displaying fair marketing posters approved by BPCA; (f) including in any printed materials used in the marketing of the Units an equal opportunity logo, slogan, or statement approved by BPCA; (g) prominently posting signs displaying the logo, slogans and statements referred to in (e) and (f) above at each of Tenant's sales or rental offices; and (h) listing all community groups and organizations and Minority and women's groups and organizations to be contacted by Tenant.

The Plan shall also include: (a) a description of the training to be given to Tenant's rental and/or sales staff; (b) evidence of non-discriminatory hiring and recruiting policies for staff engaged in the rental or sale of the Units; (c) a description of Tenant's selection and screening procedures for prospective renters or buyers; and (d) copies of Tenant's lease or sale agreements for the Units for prospective renters or buyers; and (d) copies of Tenant's lease or sale agreements for the Units.

In addition, the Plan shall include information concerning the number of Units available, a description of the commercial units and related facilities available, the type of commercial and other uses sought for such units and facilities, the rental or sale range of the Units, the financial eligibility and other selection criteria to be employed by Tenant in the rental or sale of the Units, the anticipated occupancy results for Minorities and for single women and single parent households headed by women, and Tenant's commitment to make such changes to the Plan as may be reasonably required by BPCA to achieve the purposes thereof. In the event BPCA requires Tenant to make changes to the Plan, such changes shall not cause Tenant to incur more than ten thousand dollars ($10,000) in additional expenditures in excess of the amount set forth in the Plan.

Tenant shall submit with the Plan an advertising and promotional budget for its outreach effort to Minorities and women, which budget shall also be subject to BPCA's prior written approval.

3. Pre-Marketing Conference. At lease ninety (90) days prior to undertaking any marketing activity, Tenant and BPCA shall meet to review the Plan and determine what modifications, if any, of the Plan should be made to achieve the purposes thereof.

4. Marketing of Commercial Units. Prior to undertaking any marketing activity with respect to the commercial units and related facilities, Tenant shall request BPCA to submit the names of minority and women-owned business enterprises which may be

interested in renting or purchasing such units and facilities, if any. Upon receipt of such submission, Tenant shall contact the minority and women-owned business enterprises set forth in such submission regarding the rental or sale of the commercial units and related facilities.

5 Reporting Requirements. Following the commencement of marketing activities and until eighty percent (80%) of the Units are rented or sold, Tenant shall submit, on a monthly basis, to BPCA: (a) one copy or script of all advertising regarding the Units, including newspaper, radio and television advertising and a photograph or copy of all rental or sale signs at the Building and each rental or sale office of Tenant; (b) one copy of all brochures and other printed material used in connection with the rental or sale of the Units; (c) evidence of outreach efforts to community groups and organizations; (d) evidence of affirmative action outreach to Minorities and women with respect to the Units; (e) evidence of instructions to employees with respect to Tenant's rental or sales staff; (f) one copy of each application list and waiting list of prospective renters or buyers; (h) one copy of each sign-in list maintained at the Building and each rental or sales office of Tenant for prospective renters or buyers who are shown the Units; (i) any other information which documents Tenant's efforts to comply with the Plan; (j) a list of any Minority or women applicants who have been rejected and the basis for their rejection; and (k) any other documents, records and information relating to the marketing of the Units which BPCA may reasonably request (except that Tenant need not provide proprietary marketing studies and information utilized solely by Tenant in setting sale prices or rent levels for the Units.

Thereafter, whenever Tenant revises, amends, changes or corrects any document, record or information previously provided to BPCA, Tenant shall provide a copy of such revised, amended, changed or corrected version to BPCA.

6. Recordkeeping. Tenant shall maintain records which show the Minority group and gender characteristics of all applicants for, occupants of, the Units. The

date of each application shall be recorded and applications shall be retained for a period of two years. on or before the fifteenth day of each month beginning with the commencement of marketing activities and until ninety-five percent (95%) of the Units are rented or sold, Tenant shall submit to BPCA a report, on the form annexed hereto as Schedule I, summarizing the Minority group and gender characteristics of applicants and occupants, and an occupancy report on the Units. After eighty percent (80%) of the Units have been rented or sold, Tenant may, if it so chooses, provide such information with respect to new occupants only. The classification of applicants and occupants by the required characteristics shall be made in accordance with estimates of Tenant's staff, which will make such estimates on the basis of their observations of the personal appearance, surname, speech pattern and other identifying characteristics of the applicants and occupants. Such observations shall be subject to and shall respect the applicants' and occupants right of privacy. Tenant and its staff shall not be required to ask any applicant or occupant to identify his or her race, ethnicity or gender.

If the number of Minorities or women applying for the Units does not meet the expectations of BPCA and Tenant, they will consider jointly the implementation of other measures designed to attract Minority and women applicants and occupants.

7. Monitoring. At BPCA's request and expense, Tenant shall allow BPCA to place a representative at Tenant's rental or sales office of offices to monitor compliance with the Plan, provided that such BPCA representatives shall not interfere with Tenant's sales and marketing activities. BPCA shall determine, in its discretion, when and whether it wishes to commence, discontinue or renew monitoring Tenant's activities under the Plan.

8. Non-Compliance. In the event that Tenant fails to comply with the Plan or with any of its other obligations hereunder, BPCA be shall entitled to take the following remedial action or actions, as BPCA shall deem appropriate, as its exclusive (a) applying to any court of competent jurisdiction for such declaratory and equitable relief as may be available to BPCA to secure the specific performance by Tenant ineligible to

participate in any other aspect of, or work on, Battery Park City or any other BPCA project (except for completion of the Building and the exercise of its rights under the Lease); (b) requiring Tenant to take remedial action such as holding some or all of the units off the market until Tenant is in compliance; (c) hiring a consultant to assist with outreach efforts to Minorities and women, whose services shall be paid for by Tenant; and (d) pursuing any other remedies available to BPCA under the Lease (except for declaring Tenant in default thereunder) remedies hereunder:

9. Rent Levels and/or Sale Prices. Nothing herein contained is intended to restrict or limit Tenant in setting rent levels and/or sale prices for the Units.

10. No BPCA Liability. No act of, or failure to act by, BPCA hereunder shall create or result in any liability on the part of BPCA or any of its members, officers, employees or agents to Tenant or to any other party, or give rise to any claim by Tenant or any other party against BPCA or any of its members, officers, employees or agents, whether for delay, for damages or for any other reason. The provisions of this Program shall be enforceable by BPCA and Tenant only, and are not intended to confer any right of enforcement of cause of action upon any other person, entity or association.

11. Performance under Lease. No requirement of this Program, or the assumption or performance by Tenant of any obligation hereunder, shall excuse Tenant from the performance of any of its obligations under the Lease, or constitute a defense to any claim by BPCA under the Lease, whether for default, rental, damages or otherwise.

12. Notices and Addresses. (a) Any notice or other Communication given by BPCA or Tenant to the other relating to this Program shall be in writing and sent by postage prepaid, registered or certified mail, return receipt requested, addressed to the other at its address set forth below, or delivered personally to the other at such address, and such notice or other communication shall be deemed given three (3) days after the date of mailing or when so delivered:

If to BPCA, to:

Battery Park City Authority
One World Financial Center
18th Floor
New York, NY 10281

Attention: Director,
Affirmative Action

If Tenant to:

Attention: Affirmative Action Officer

(b) BPCA or Tenant may at any time advise the other of a change in its address or designate a different person to whom notice shall be mailed by giving written notice to the other party of such change or designation in the manner provided in this Section 12.

13. Separability. If any provision of this Program shall for any reasons be held unenforceable or invalid, neither the enforceability nor the validity of any other provision of this Program shall affected thereby.

14. Governing Law. This Program shall be construed and enforced in accordance with the laws of the State of New York.

SCHEDULE 1

BATTERY PARK CITY AUTHORITY
MONTHLY RENTAL OR SALES REPORT

PERIOD ENDING: REPORT NO_____.

CHECK, IF APPLICABLE
[ ] Initial Report
[ ] Final Report

1. INTRODUCTION

Pursuant to each approved Plan for the rental or sale of housing or commercial units, this report shall be filed with BPCA on or before the fifteenth day of each month following monthly unit 95% of the units covered by the Plan are rented or sold.

2. PROJECT IDENTIFICATION

A. SITE:_____.

B. NUMBER OF UNITS: _____.

C. RENTAL OR SALE RANGE OF HOUSING UNITS

From: $_____ To: $_____

D. RENTAL/MANAGEMENT AGENCY

NAME: _____

ADDRESS: _____

3. ANTICIPATED HOUSING OCCUPANCY RESULTS FOR MINORITIES
(State in number of units the racial/ethnic mix anticipated as a result of the Plan):

[ ] White [ ] Black [ ] American Indian or Alaskan Native

[ ] Hispanic [ ] Asian or Pacific Islander

4. ANTICIPATED HOUSING OCCUPANCY RESULTS FOR WOMEN **[State in number of units the mix of single women and single percent households headed by women anticipated as a result of the Plan]**

[ ] Single Women [ ] Single Percent Household Headed by Women

5. HOUSING RENTAL OR SALES ACTIVITIES (Entries must be made for all items and columns Use "O" when necessary.) The approximations required throughout this report should be judged from personal appearance, surname, speech pattern and/or other identifying characteristics or information.

A. RENTAL OR SALES FOR REPORTING PERIOD

	RENTALS	SALES
WHITE.....		
BLACK.....		
AMERICAN INDIAN OR ALASKAN NATIVE.....		
HISPANIC.....		
ASIAN OR PACIFIC ISLANDERS.....		
TOTAL.....		
SINGLE WOMEN.....		
SINGLE PARENT HOUSEHOLDS HEADED BY WOMEN.....		
OTHER.....		
TOTAL.....		

B. TOTAL NUMBER OF HOUSING UNITS CURRENTLY OCCUPIED INCLUSIVE OF TOTALS INDICATED IN ITEM 5.A. ABOVE.

	RENTALS	SALES
WHITE.....		
BLACK.....		
AMERICAN INDIAN OR ALASKAN NATIVE.....		
HISPANIC.....		
ASIAN OR PACIFIC ISLANDERS.....		
TOTAL.....		

SINGLE WOMEN.....
SINGLE PARENT HOUSEHOLDS
HEADED BY WOMEN.....
OTHER.....
TOTAL.....

C. ESTIMATED PERCENTAGE RACIAL/ETHNIC MIX OF VISITORS TO RENTAL OR SALES OFFICE FOR REPORTING PERIOD.

	RENTALS	SALES
WHITE.....		
BLACK.....		
AMERICAN INDIAN OR ALASKAN NATIVE.....		
HISPANIC.....		
ASIAN OR PACIFIC ISLANDERS.....		
TOTAL..... 100%		

D. ESTIMATED PERCENTAGE GENDER MIX OF VISITORS TO RENTAL OR SALES OFFICE FOR REPORTING PERIOD.

	RENTALS	SALES
WOMEN.....		
MEN.....		
WOMEN AND MEN TOGETHER....		
TOTAL..... 100%		

6. INDEMNIFICATION OF NEW HOUSING TENANTS OR OWNERS WHO ARE MINORITIES DURING REPORTING PERIOD (continue on a separate page if necessary).

NAMES	APARTMENT NUMBERS

7. IDENTIFICATION OF NEW HOUSING TENANTS OR OWNERS WHO ARE SINGLE WOMEN OR SINGLE PARENT HEADS OF HOUSEHOLDS DURING REPORTING PERIOD (continue on a separate page if necessary).

NAMES APARTMENT NUMBERS

8. COMMERCIAL UNITS (if any)

A. NUMBER OF UNITS: _____

B. RENTAL OR SALE RANGE OF UNITS

From: $___ To: $

C. RENTAL OR SALE ACTIVITIES (Entries must be made for all items and columns. Use "O" when necessary).

1. RENTALS OR SALES FOR REPORTING PERIOD

	RENTALS	SALES
WHITE.....		
BLACK.....		
AMERICAN INDIAN OR ALASKAN NATIVE.....		
HISPANIC.....		
ASIAN OR PACIFIC ISLANDERS.....		
TOTAL.....		

2. TOTAL NUMBER OF UNITS CURRENTLY OCCUPIED INCLUSIVE OF TOTALS INDICATED IN ITEM C.1. ABOVE.

	RENTALS	SALES
WHITE.....		
BLACK.....		
AMERICAN INDIAN OR ALASKAN NATIVE.....		
HISPANIC.....		
ASIAN OR PACIFIC ISLANDERS.....		
TOTAL.....		

	RENTALS	SALES
SINGLE WOMEN.....		
SINGLE PARENT HOUSEHOLDS HEADED BY WOMEN.....		
OTHER.....		
TOTAL.....		

3. IDENTIFICATION OF NEW MINORITY TENANTS OR OWNERS DURING REPORTING PERIOD (continue on a separate page if necessary).

NAMES	UNIT NUMBERS

SIGNATURE OF PERSON SUBMITTING REPORT NAME (Type or Print)

_____

TITLE AND COMPANY: _____ DATE: _____

ADDRESS: _____

_____

January 1, 2000

Millennium BPC Development, LLC
c/o Millennium Partners
1995 Broadway
New York, NY 10023

Gentlemen:

Reference is made to the Agreement of Lease dated the date hereof (the "Lease") between Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority as landlord ("BPCA") and Millennium BPC Development LLC as tenant ("Tenant") covering Site 1 in Battery Park City. All terms not otherwise defined herein shall have the meanings set forth in the Lease.

We have agreed, in connection with the Affirmative Fair Marketing Program annexed to the Lease as Exhibit L (the "Marketing Program") that the schedule for submission of the Plan and the Pre-marketing Conference (both as described in the Marketing Program) shall be modified as set forth in the letter from Tenant to BPCA dated December 15, 1999. BPCA acknowledges that Tenant has commenced marketing of the residential units in the building and Tenant agrees that upon submission of the Plan, a Pre-Marketing Conference shall be held as soon as practicable thereafter and further marketing efforts shall be consistent with the Plan.

All other requirements of the Marketing Program not modified by this letter shall remain effective as stated therein.

BATTERY PARK CITY AUTHORITY
d/b/a HUGH L. CAREY BATTERY PARK
CITY AUTHORITY

By: _____
Name: Timothy S. Carey
Title: President and CEO

AGREED AND ACKNOWLEDGED:
MILLENNIUM BPC DEVELOPMENT LLC

By: _____
Name: Philip E. Aarons
Title: Vice President

358203.1
02767-00001

January 1, 2000

Millennium BPC Development, LLC
c/o Millennium Partners
1995 Broadway
New York, NY 10023

Gentlemen:

Reference is made to the Agreement of Lease dated the date hereof (the "Lease") between Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority as landlord ("BPCA") and Millennium BPC Development LLC as tenant ("Tenant") covering Site 1 in Battery Park City. All terms not otherwise defined herein shall have the meanings set forth in the Lease.

We have agreed, in connection with the Affirmative Fair Marketing Program annexed to the Lease as Exhibit L (the "Marketing Program") that the schedule for submission of the Plan and the Pre-marketing Conference (both as described in the Marketing Program) shall be modified as set forth in the letter from Tenant to BPCA dated December 15, 1999. BPCA acknowledges that Tenant has commenced marketing of the residential units in the building and Tenant agrees that upon submission of the Plan, a Pre-Marketing Conference shall be held as soon as practicable thereafter and further marketing efforts shall be consistent with the Plan.

All other requirements of the Marketing Program not modified by this letter shall remain effective as stated therein.

BATTERY PARK CITY AUTHORITY
d/b/a HUGH L. CAREY BATTERY PARK
CITY AUTHORITY

By: _____
Name: Timothy S. Carey
Title: President and CEO

AGREED AND ACKNOWLEDGED:
MILLENNIUM BPC DEVELOPMENT LLC

By: _____
Name: Philip E. Aarons
Title: Vice President

358203.1
02767-00001

EXHIBIT M

Collateral Resignation

To: Condominium Board of
Millennium Point
25 Battery Place
New York, New York 10281

Battery Park City Authority,
d/b/a Hugh L. Carey Battery
Park City Authority
One World Financial Center
New York, New York 10281
Attention: President

Ladies and Gentlemen:

The undersigned hereby tenders [his] [her] resignation as a member of the Condominium Board and the [Residential] [Commercial] Board of the Condominium known as Millennium Point, such resignation to be effective upon (x) the occurrence of Condominium Default, as such term is defined in that certain Ground Lease, dated as of January 1, 2000, as it may be amended from time to time (the "Lease"), between Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority, as landlord ("BPCA"), and [the Condominium Board of Millennium Point], as successor to Millennium BPC Development, LLC, as tenant, which has not been timely cured by the Condominium Board and/or the [Residential Board][Commercial Board] as provided in Section 43.09(b) of the Lease, and (y) acceptance of such resignation by BPCA in writing.

Very truly yours,

_____

Name: _____
Address: _____

_____

Phone No.: _____
Fax No.: _____

Date: _____

[THIS FORM TO BE COMPLETED AS APPROPRIATE]

EXHIBIT N

MANAGEMENT AGREEMENT SUBORDINATION
RECOGNITION AND ATTORNMENT AGREEMENT

THIS MANAGEMENT AGREEMENT SUBORDINATION RECOGNITION AND ATTORNMENT AGREEMENT (this "Agreement"), made as of this ____ day of ____, _____, among BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281 ("Landlord"); [Tenant under the Ground Lease] having an office at [_____] ("Tenant"); and [Name of Manager] [MILLENNIUM PARTNERS BPC MANAGEMENT LLC, a Delaware limited liability company having an office at c/o Millennium Partners, 1995 Broadway, New York, New York 10023] ("Manager").

W I T N E S S E T H:

WHEREAS, [whereas clauses to be conformed] pursuant to that certain Ground Lease dated as of January 1, 2000 between Landlord and Tenant, as successor to [Millennium BPC Development LLC,] (such lease, as the same may be assigned, amended or restated from time to time, the "Ground Lease"), Tenant is the tenant of a leasehold estate of certain real property known as Site 1 located in Battery Park City, New York, New York, more particularly described on Schedule A attached hereto and made a part hereof (the "Land"), upon which Tenant [intends to construct] [has constructed] a building and related improvements (the "Development"), containing among other things, a hotel to be known as "The Ritz-Carlton, Downtown New York" and residential apartments (the "Tenant's leasehold interest in the Land and the Development are collectively referred to herein as the "Premises");

WHEREAS, a Memorandum of the Ground Lease was recorded on _____ in Reel _____, page ____, in the office of the City Register of the City of New York for the County of New York;

WHEREAS, Tenant [intends to convert] [has converted] the Development to condominium ownership pursuant to the terms of the Ground Lease and desires to retain its affiliate, the Manager, to manage the components of the Development other than the Hotel Portion (as defined in the Ground Lease) pursuant to the [describe Management Agreement], as from time to time amended, modified or supplemented (the "Management Agreement");

WHEREAS, it is a requirement of the Landlord under the Ground Lease that Tenant and Manager execute and deliver this Agreement to Landlord.

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants and agreements set forth herein and for ten dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto agree as follows:

1. Effectiveness. The terms and provisions of this Agreement shall be effective from and after the date hereof, and shall apply to the Management Agreement and any and all amendments and modifications thereof entered into from time to time by Tenant or its successors and assigns with the Manager or its successors and assigns.

2. Subordination. (a) Each of Tenant and Manager hereby covenants and agrees that the Management Agreement and Manager's rights thereunder (including, without limitation, Manager's right to receive any fees or compensation thereunder) are, and shall at all times continue to be, subject and subordinate in each and every respect to the Ground Lease, the Master Lease, the Title Matters, all mortgages and any other instruments senior to the Ground Lease and, upon the Condominium Date, to the Condominium Documents, the Hotel Unit Lease and the Hotel Unit Sublease. Manager, upon written request from Landlord, shall execute and deliver any further certificate or other instrument which Landlord may reasonably request to confirm said subordination by Manager.

(b) The parties hereto hereby agree that upon the Condominium Date, the Tenant's rights and obligations under the Management Agreement shall automatically, and without the need of any action on the part of any party thereto, be transferred to and assumed by the Condominium Board, as the successor Tenant under the Ground Lease, provided that the rights of Manager thereunder shall at all time be subject and subordinate to the rights of Landlord and its successors and assigns as set forth in subsection (a) above.

3. Estoppel. Manager hereby represents and warrants to Landlord as follows, with the understanding that Landlord is relying on the truth and accuracy of the representations and warranties set forth in this Section 3:

(a) The Management Agreement is unmodified as of the date hereof and is in full force and effect and there are no other agreements between Tenant and Manager that would be binding upon any successor in interest to Tenant other than the Management Agreement.

(b) Manager has received payment in full of all fees due and currently payable to Manager under the Management Agreement.

(c) Manager is not aware of any default by either party under the Management Agreement. As of the date of this Agreement, to Manager's knowledge, Manager has no accrued cause of action, claim or right of offset under the Management Agreement or any defenses to its obligation to perform under the Management Agreement.

4. Rights of Landlord upon Default.

(a) Upon receipt by Manager of written notice from Landlord that an Event of Default has occurred and is continuing under the Ground Lease or the Hotel Unit Sublease, Landlord shall have the right to exercise all rights as Tenant under the Management Agreement for so long as such Event of Default is outstanding.

(b) Notwithstanding anything to the contrary contained herein or in the Management Agreement, Landlord shall have the right at any time upon the occurrence of the Termination Event (as defined below) to terminate the Management Agreement, without cause and without liability and immediately upon receipt of notice, by giving written notice to Manager of its election to do so.

(c) For purposes hereof, the term "Termination Event" shall mean either to occur of (x) the vote at the request of Landlord of a majority of the then Residential Unit Owners (excluding any votes held by Affiliates of the Manager) to terminate the Management Agreement after the occurrence of an Event of Default under the Ground Lease which did not arise as a result of any act or omission of the Hotel Unit Sublessee (whether or not the Hotel Unit Sublessee is an Affiliate of Manager) or (y) the termination of the Hotel Unit Sublease by Hotel Unit Sublessor because of a default by Hotel Unit Sublessee, if the Hotel Unit Sublessee is (at the time of the default) an Affiliate of Manager.

5. Attornment. Upon the termination of the Ground Lease, Landlord shall have the right, exercisable at any time within thirty (30) days after such termination, to require Manager to attorn to and to recognize Landlord as successor to Tenant under the Management Agreement, in which case the following provisions shall apply:

(a) Manager shall be bound to Landlord under all of the terms, covenants and conditions of the Management Agreement, or subject to the terms thereof, for the remainder of the term of the Management Agreement, with the same force and effect as if Landlord were the "Owner", under the Management Agreement. Manager shall attorn to and recognize Landlord as "Owner", as applicable, under the Management Agreement, with such attornment being effective and self-operative without the execution of any further instruments. Manager, upon written request from Landlord, shall execute and deliver any certificate or other instrument which Landlord may reasonably request to confirm such attornment by Manager. Landlord and Manager hereby waive the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give Landlord and/or Tenant any right or election to terminate or otherwise adversely affect the Management Agreement or the obligations of Tenant and Landlord thereunder by reason of any termination of the Ground Lease.

(b) Landlord shall succeed to the position, rights and obligations of "Owner", under the Management Agreement; provided however that Landlord shall not be:

(i) liable for any previous act or omission of Tenant under the Management Agreement;

(ii) responsible for any monies then owing by Tenant to the credit of Manager;

(iii) subject to any offsets, claims, counterclaims, demands or defenses which Manager may have against Tenant under the Management Agreement;

(iv) bound by any covenant in the Management Agreement to either (i) undertake or complete any construction of, in or about the Premises (or any part thereof), or in the event of a casualty or condemnation, to restore the Premises (or any part thereof); or (ii) provide any money or credit or concession, by way of an allowance to Manager or otherwise, to or for any such construction or restoration in the case of a casualty or condemnation;

(v) bound by any amendment, or modification or surrender of the Management Agreement, made after the date hereof, to which Landlord shall not have given its consent in writing which consent shall not be unreasonably withheld or delayed with respect to immaterial amendments and/or modifications; and

(vi) personally liable for the obligations of "Owner", as applicable, under the Management Agreement, it being agreed that Manager shall look solely to the interest of Landlord in the Premises for satisfaction of such obligations.

(c) If Landlord succeeds to the position, rights and obligations of "Owner", as applicable, under the Management Agreement, Landlord shall have the right to assign its interest under the Management Agreement to a third party or parties and, effective on any such assignment, Landlord shall be released from any further liability thereof.

6. Payments to Landlord. Manager and Tenant hereby agree that, following an Event of Default (as defined in the Ground Lease) by Tenant under the Ground Lease of which Landlord has notified Manager in writing, in the event of a demand on Manager by Landlord for the payment to it of any sums due to Tenant under the Management Agreement, Manager shall, and is hereby authorized and directed by Tenant to, pay said sums directly to Landlord for so long as any such Event of Default is continuing; payment of said sums by Manager to Landlord pursuant to such demand shall constitute performance of Manager's obligations under the Management Agreement for the payment of the same to Tenant, to the extent of the payments so made. Manager shall have no obligation to investigate the validity of any such default notices.

7. Leases and Submanagement Agreements Subordinate. (a) Any lease or sublease entered into by Manager on behalf of Tenant with respect to the Development, or any portion thereof, shall be made expressly subject and subordinate to the Ground Lease, the Title Matters, the Master Lease, all mortgagees and any other instruments senior to the Ground Lease, and upon the Condominium Date, to the Condominium Documents, the Hotel Unit Lease and the Hotel Unit Sublease.

(b) Any and all submanagement or other agreements entered into by Manager in connection with the Development, or any portion thereof, shall be made expressly subject and subordinate to the Management Agreement, this Agreement, the Ground Lease, the Title Matters, the Master Lease, all mortgagees and any other instruments senior to the Ground Lease, and

upon the Condominium Date, to the Condominium Documents, the Hotel Unit Lease and the Hotel Unit Sublease. Upon termination of the Management Agreement, any parties to any such submanagement agreement shall expressly agree for the benefit of the Landlord that any such submanagement agreement shall be terminated or, at the option of the Landlord, any such submanager or agent shall attorn to the Landlord on substantially the same terms as are set forth in Section 5.

8. Conflict. In the event of any inconsistency between the terms of this Agreement and the terms of the Management Agreement, the terms of this Agreement shall control.

9. Modification. This Agreement may not be modified except by an agreement in writing signed by the parties or their respective successors in interest.

10. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns.

11. Notices. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and delivered to the party to whom the notice, demand or request is being made by personal delivery with receipt acknowledged or by mailing the same by registered or certified mail, postage prepaid, return receipt requested or by Fed Ex or other similar reputable national overnight courier service: (i) if to Landlord, at One World Financial Center, New York, New York 10281, Attention: President, with a copy to General Counsel, and an additional copy to Torys, 237 Park Avenue, New York, New York 10017, Attention: Miroslav M. Fajt, Esq.; (b) if to Tenant, c/o Millennium Partners, LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attention: Eric R. Landau, Esq.; (c) if to Manager, c/o Millennium Partners, LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attention: Eric R. Landau, Esq.; or to such other address as any party may from time to time designate by notice given to the other parties in the manner herein provided at least fifteen (15) days prior to such address becoming effective.

12. Miscellaneous.

(a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements to be performed entirely within such state (without regard to the principles of conflicts of laws).

(b) Should any term or provision of this Agreement or the application thereof to any Person or circumstances any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Agreement shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree to modify any such unenforceable provision of this Agreement in lieu

of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as are appropriate to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

13. Signature Counterparts. This Agreement may be executed in counterparts, each of which shall deemed an original but all of which taken together shall constitute one and the same Agreement.

14. Capitalized Terms. All capitalized terms used herein which are not otherwise defined shall have the respective meanings ascribed to such terms in the Ground Lease.

15. Further Assurances. Landlord, Tenant and Manager shall execute such documents as may be necessary or reasonably requested by any party hereto to carry out and consummate the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

Landlord:

BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By: _____
Name:
Title:

Tenant:

[_____]

By: _____
Name:
Title:

Manager:
[MILLENNIUM PARTNERS BPC MANAGEMENT LLC]

By: Millennium Partners Management LLC

By: Millennium Manager I, Inc.

By: _____
Name:
Title:

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

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

Schedule A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

EXHIBIT O

CONSTRUCTION COMPLETION ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement"), dated as of the _____ day of _____ by and between Battle Fowler LLP ("Escrow Agent"), Millennium BPC Development LLC ("Sponsor") and Battery Park City Authority d/b/a Hugh L. Carey Battery Park City Authority ("BPCA").

WITNESSETH

WHEREAS, Sponsor is the tenant under that certain lease with the Battery Park City Authority ("BPCA") dated as of January 1, 2000, as same may be amended from time to time (the "Lease") for the premises known as Site 1 at Battery Park City, also known as Millennium Point, 25 Battery Place, New York, New York, (the "Premises");

WHEREAS, Sponsor is the sponsor under that certain offering plan dated November 4, 1999, as amended (the "Plan"), to submit the Sponsor's leasehold interest in the Premises to a leasehold condominium regime;

WHEREAS, Sponsor has agreed, pursuant to the Plan and the Lease, to deposit into escrow (the "Certificate of Occupancy Escrow") such amount as the Sponsor's Architect shall certify, upon and subject to the terms contained in the Plan and the Lease, to secure the completion of construction activities to effect the Completion of the Building (as defined in the Lease) and to obtain the permanent certificate of occupancy for the Building (the "Certificate of Occupancy"), as more particularly described herein;

WHEREAS, pursuant to the Lease, Sponsor has undertaken various obligations, including, without limitation, the obligation to effect the Completion of the Building and to comply with its obligations under the Plan with respect to the Certificate of Occupancy Escrow, subject to and upon the terms and conditions set forth herein, including, without limitation, the condition that the Escrowed Funds (as hereinafter defined) shall not be paid to Sponsor so long as any obligations of Sponsor to complete construction under the Lease remain undischarged;

NOW, THEREFORE, the parties hereto agree as follows:

1. Appointment of Agent.

(a) Sponsor hereby appoints Escrow Agent to act as its escrow agent on the terms and conditions hereinafter set forth, and Escrow Agent accepts such appointment.

(b) Simultaneously with the execution of this Agreement, Sponsor has

delivered to Escrow Agent, and Escrow Agent hereby acknowledges receipt of, the sum of $_____ (such aggregate sum, together with any interest earned thereon, as reduced by disbursements from time to time in accordance with the terms hereof, is hereinafter referred to as the "Escrowed Funds"), representing the sum of the estimated cost to complete work to be performed at the Premises necessary to effect Completion of the Building as provided in the Lease and obtain a permanent Certificate of Occupancy for the entire Building less the aggregate costs attributable to the following (to the extent same may be deemed to be a portion of the costs of the Completion of the Building): (i) moveable FF & E (as defined in the Lease) attributable to the Hotel Unit, including without limitation, laundry equipment and refrigerators, stoves, dishwashers and other major kitchen appliances or similar moveable equipment, to the extent the same has not yet been delivered to or installed at the Premises, (ii) initial working capital for the operation of the Hotel Unit, (iii) pre-opening expenses related to the opening of the Hotel Unit to the general public, (iv) costs attributable to completion of the Public Amenity Space, other than the costs attributable to the completion of the Public Amenity Core and Shell, and (v) the cost of licenses and permits required for the operation of the Hotel (including, without limitation, liquor and restaurant licenses but not including the certificate of occupancy or other construction or building related permits) (such work, taking into account the foregoing clauses reducing the scope thereof, is defined as the "Work").

(c) Escrow Agent agrees to hold for, and on behalf of, Sponsor or, as applicable, BPCA, the Escrowed Funds and to take such actions with respect to the Escrowed Funds as are provided in Section 2 hereof.

2. Disposition of the Escrowed Funds.

(a) At any time, and from time to time, after the date hereof, subject to the provisions hereof, Escrow Agent shall release to Sponsor the Escrowed Funds such portion of the Escrowed Funds authorized hereunder, upon not less than five (5) business days' written demand therefor made by Sponsor, and subject to the satisfaction of the following conditions:

(i) Sponsor shall deliver to Escrow Agent and BPCA (A) a written request for the Escrowed Funds or the portion thereby to be disbursed, and (B) a certificate from the Architect therefor (the "Architect's Certificate") in the form annexed hereto as Exhibit "A" (i) confirming that all Work completed through the date of such Architect's Certificate, was performed in accordance with the applicable plans and specifications, and the requirements set forth in the Lease (to the extent there are plans, specifications and/or requirements for same); and (ii) certifying the estimated cost to complete that portion of the Work not yet completed as of the date of such Architect's Certificate.

(ii) The Escrowed Funds held hereunder after any disbursement shall at all times be an amount equal to or greater than the cost of the Work remaining to be performed at the Premises, as certified by the Architect in the Architect's Certificate delivered

to Escrow Agent pursuant to clause (i) (the "Minimum Escrow Amount") and no disbursement shall be made that would cause the Escrowed Funds to be less than the Minimum Escrow Amount.

(b) Not earlier than five (5) business days after receipt by Escrow Agent and BPCA of each such demand for the Escrowed Funds or any portion thereof including the certificates required under Section 2(a)(i) hereof, Escrow Agent shall deliver to Sponsor that portion of the Escrowed Funds then being requested by Sponsor, subject to compliance with the terms of this Section 2 of this Agreement including Section 2(c).

(c) In the event BPCA shall dispute the initial amount of the Escrowed Funds or any amount sought to be released by Sponsor pursuant to the terms of any Architect's Certificate submitted to Escrow Agent pursuant to Section 2(a)(i) of this Agreement, BPCA, within twenty (20) business days of the date hereof or the date of receipt of the disputed Architect's Certificate, may submit the matter for resolution to the architectural firm of Beyer Binder Belle or such other reputable architectural or engineering firm designated by BPCA and subject to Sponsor's approval, which approval shall not be unreasonably withheld or delayed (the "BPCA Architect"). Except as provided below, nothing contained herein shall restrict the right of the Escrow Agent to disburse the Escrowed Funds requested in accordance with Section 2(a)(i) hereof. In the event that the BPCA Architect determines that the Escrowed Funds held by Escrow Agent are less than the Minimum Escrow Amount, Sponsor, within five (5) business days after notification of such determination, deposit the shortfall into the Escrow Account, and, following such notification, until such deposit is made no further disbursement from the Escrowed Funds shall be made pursuant to Section 2(a) and 2(b).

(d) In the event that the Sponsor shall fail timely to effect Completion of the Building as provided in the Lease, any remaining Escrowed Funds shall be disbursed by the Escrow Agent to BPCA or to any third parties as directed by BPCA, to cover the costs and expenses incurred by BPCA, as reasonably documented, to effect Completion of the Building in accordance with the terms and provisions of the Lease (including, without limitation, any of BPCA's legal, architectural and other costs and expenses) and upon receipt of a certificate by an engineer or architect designated by BPCA, in the form annexed hereto as Exhibit A, (i) certifying the estimated cost to complete the remaining Work; and (ii) confirming that the Escrowed Funds remaining in the escrow hereunder after such disbursement are at least equal to the estimated cost to complete the Work. Notwithstanding the foregoing, the Escrowed Funds shall at all times be an amount equal to or greater than the cost of the Work remaining to be performed at the Premises, as certified by the Architect in the most recent Architect's Certificate delivered to Escrow Agent.

(e) Notwithstanding anything to the contrary set forth herein, upon completion of the Work, as certified by the Architect, any remaining Escrowed Funds shall be released from escrow by Escrow Agent to Sponsor; provided however, that if BPCA has drawn

down upon the Design/Construction Period Letter of Credit or Replacement Letter of Credit as provided under the Lease, the first portion of any then remaining Escrowed Funds equal to the amounts so drawn shall be released to BPCA and no further amount shall be disbursed to Sponsor for so long as a Default or an Event of Default exists under the Lease.

(f) Sponsor and Escrow Agent hereby expressly acknowledge and agree:

(1) that BPCA has had no role whatsoever in the calculation or other determination of the Escrowed Amount, and does not have, and shall never have, any obligations to any person or entity whatsoever relating to the adequacy of the Escrowed Amount or the performance of the acts secured by the Escrowed Amount, the provisions of this Escrow Agreement pertaining to BPCA being intended by all parties to relate only to BPCA's interest pursuant to the Lease in the availability of funds to complete the Work;

(2) that the establishment of the Certificate of Occupancy Escrow is a material condition of BPCA consenting to the first conveyance of a condominium unit at the Premises;

(3) that the acknowledgements and agreement contained in this subsection (f) shall not in any way expand the obligations or limit the rights of BPCA under the Lease or otherwise modify the Lease.

(g) Nothing in this Section 2 shall have any effect whatsoever upon Escrow Agent's rights, duties and obligations under Section 3.

(h) Sponsor and Escrow Agent hereby expressly agree that this Agreement shall not be modified amended or terminated without BPCA's express written consent except as expressly provided herein.

3. Concerning Escrow Agent.

(a) It is expressly understood that Escrow Agent acts hereunder as an accommodation to Sponsor and as a depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, or for the form of execution of such instruments or for the identity, authority or right of any person executing or depositing the same or for the terms and conditions of any instrument pursuant to which Escrow Agent or the parties may act.

(b) Escrow Agent shall not have any duties or responsibilities except those set forth herein and shall not incur any liability in acting in accordance with the provisions hereof in reliance upon any signature, notice, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be genuine, and Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so.

(c) Escrow Agent shall not be liable, except for its own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against Escrow Agent, Sponsor hereby agrees to indemnify, save and hold Escrow Agent harmless of, from and against any and all loss, damage, claims, liabilities, judgments, and other cost and expense of every kind and nature which may be incurred by Escrow Agent by reason of its acceptance of, and its performance under this Agreement (including, without limitation, attorneys' fees either paid to retained attorneys or amounts representing the fair value of legal services rendered to itself).

(d) Escrow Agent shall be automatically released from all responsibility and liability under this Agreement upon Escrow Agent's delivery, disbursement or deposit of the Escrowed Funds in accordance with the provisions of this Agreement, except for matters arising hereunder prior to such delivery or deposit.

(e) Escrow Agent shall be entitled to rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity or the service thereof. Escrow Agent may act in reliance upon any instrument or signature believed by it to be genuine and may assume that any person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so.

(f) Escrow Agent (and any successor escrow agent) may at any time resign as such by delivering the Escrowed Funds not yet delivered to Sponsor to any successor escrow agent jointly designated by the parties hereto in writing, or by depositing such Escrowed Funds, in accordance with appropriate procedures, with any appropriate court of competent jurisdiction in the State of New York, whereupon Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of Escrow Agent will take effect on the earlier of (i) the appointment of a successor or (ii) the day which is 30 days after the date of delivery of its written notice of resignation to the other parties hereto. If at that time Escrow Agent has not received a designation of a successor escrow agent, Escrow Agent's sole responsibility after that time shall be to safekeep the Escrowed Funds not yet disbursed to Sponsor until receipt of a designation of successor escrow agent or a joint written disposition instruction by the other parties hereto or a final and nonappealable order of an appropriate court of competent jurisdiction in the State of New York.

(g) Escrow Agent shall hold the Escrowed Funds in such commercial paper investments or in such other standard passbook savings accounts, U.S. Government securities, or certificates of deposit, as Escrow Agent may choose. Escrow Agent shall not have any duty to maximize the rate of interest.

(h) Nothing contained in this Agreement shall prevent Escrow Agent from complying with (i) any federal, state or local law, (ii) any order of a court of competent jurisdiction or (iii) the terms of any stay imposed in a bankruptcy or insolvency proceeding or otherwise.

4. Termination.

This Agreement shall automatically terminate upon the delivery or disbursement by Escrow Agent of the Escrowed Funds in accordance with the terms hereof.

5. Notices.

(a) Whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication shall or may be given to or served upon any party hereto, and whenever such party shall desire to give or serve upon another any notice, demand, request, consent, approval, or other communication with respect hereto or the Premises, each such notice, demand, request, consent, approval, or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

(i) if to Sponsor, by personal delivery with receipt acknowledged or by mailing the same to Sponsor by registered or certified mail, postage prepaid, return receipt requested or by FedEx or other similar reputable national overnight courier service, addressed to Sponsor c/o Millennium Partners LLC, 1995 Broadway, New York, New York 10023, Attn: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attn: Eric R. Landau, Esq., or to such other address(es) and attorneys as Sponsor may from time to time designate by notice given to BPCA and/or Escrow Agent, as provided herein and,

(ii) if to BPCA, by personal delivery with receipt acknowledged or by mailing the same to BPCA by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service addressed to BPCA at One World Financial Center, New York, New York 10281, Attn: President (with a copy, given in the manner provided above, addressed to the attention of Landlord's General Counsel, at the address set forth above or at such other address as Landlord may from time to time designate by notice to Tenant as aforesaid) with an additional copy to Torys, 237 Park

Avenue, New York, New York 10017, Attn: Miroslav M. Fajt, Esq. or to such other address(es) and attorneys as BPCA may from time to time designate by notice given to Sponsor and/or Escrow Agent, as provided herein and,

(iii) if to Escrow Agent, by personal delivery with receipt acknowledged or by mailing the same to Escrow Agent by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service addressed to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attn: Eric R. Landau, Esq., or to such other address(es) and attorneys as Escrow Agent may from time to time designate by notice given to BPCA and/or Sponsor, as provided herein.

(b) Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received). Any notice sent by Sponsor to BPCA may be sent by Sponsor's agent or attorneys. Notwithstanding the foregoing, any notice given to Escrow Agent shall be effective only upon actual receipt thereof.

6. Capitalized Terms.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Plan or the Lease; notwithstanding the foregoing, it is expressly understood and agreed by the parties hereto that all references to the Plan or the Lease are for the convenience of Sponsor, and that Escrow Agent shall have no obligation or duties with respect thereto.

7. GOVERNING LAW

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE CONFLICTS OF LAW PRINCIPLES OF SUCH STATE.

8. Successors.

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, provided, however, that this Agreement may not be assigned by any party without the prior written consent of the other party, which consent shall

not be unreasonably withheld.

9. Entire Agreement.

This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

10. Amendments.

Except as expressly provided in this Agreement, no amendment, modification, termination, cancellation or rescission to this Agreement shall be effective unless it shall be in writing and signed by each of the parties hereto.

11. Counterparts.

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

12. Severability.

If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

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

BATTLE FOWLER LLP

By: _____
Name: Eric R. Landau
Title: Partner

SPONSOR:

Millennium BPC Development LLC

By: _____
Name:
Title:

BATTERY PARK CITY AUTHORITY d/b/a
Hugh L. Carey Battery Park City Authority

By: _____
Name:
Title:

EXHIBIT "A"

LETTERHEAD OF SPONSOR'S ARCHITECT

Dated: _____

Millennium BPC Development LLC
1995 Broadway
New York, New York 10023

Battery Park City Authority
d/b/a Hugh L. Carey Battery Park City Authority
One World Financial Center
New York, New York 10281-1097

Re: Millennium Point
25 Battery Place
New York, New York (the "Premises")

Ladies and Gentlemen:

We are the architects of record for the referenced Condominium. We are familiar with both the Residential Section and the Commercial Section of the Condominium and the Construction Completion Escrow Agreement dated as of _____ (the "Escrow Agreement").

In order to obtain a permanent Certificate of Occupancy for the Condominium, certain Work must be completed. As of the date hereof, the cost to complete the Work is $_____. We hereby confirm that all Work completed through the date of this letter, was performed in accordance with the applicable plans and specifications, and the requirements set forth in the Lease (to the extent there are plans, specifications and/or requirements for same).

Any terms not defined herein shall have the meaning ascribed thereto in the Escrow Agreement.

Very truly yours,

EXHIBIT P

CONSTRUCTION COMPLETION GUARANTY

LEASE:	Ground Lease dated as of January 1, 2000 between Battery Park City Authority, d/b/a Hugh L. Carey Battery Park City Authority, a body corporate and politic, constituting a public benefit corporation of the State of New York ("**Landlord**"), as landlord, and Millennium BPC Development LLC, a New York limited liability company ("**Tenant**"), as tenant, for certain land known as Site 1 located in Battery Park City, New York
GUARANTOR:	[_____]
DATE OF THIS GUARANTY:	As of [_____]

1. (a) In consideration of, and as an inducement for, the execution and delivery of the above-captioned lease (as the same may be assigned, amended or restated from time to time, the "**Lease**"; capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Lease) and in further consideration of the sum of One ($1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, [_____], having an office at 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, hereby absolutely, unconditionally and irrevocably guarantees to Landlord, as landlord under the Lease, that Tenant shall (i) cause the Completion of the Building in accordance with the terms and provisions of the Lease and (ii) pay the amounts set forth in Section 11.05(c) of the Lease which are due and payable to Landlord (collectively and generically, "**Obligations**"). As used herein, the term "**Guarantor**" shall be deemed to include the above named Guarantor and its successors and assigns (whether by way of merger, consolidation, operation of law or otherwise). If at any time there is more than one Guarantor hereunder, the obligations of such Guarantors shall be joint and several in all respects.

(b) Without limiting Guarantor's obligations as otherwise set forth in this Guaranty, Guarantor hereby covenants and agrees with Landlord that if Tenant shall fail to cause the Completion of the Building in accordance with the terms and provisions of the Lease and a Default shall occur under the Lease as a result thereof, then Guarantor shall forthwith upon demand to Guarantor cause the Completion of the Building in accordance with the terms and provisions of the Lease, which shall include, without limitation, subject to and in accordance with the applicable terms and provisions of the Lease with respect to the Completion of the Building (i) paying all of the costs and expenses of the Completion of the Building, (ii) discharging and paying for all materialmen's or mechanics' liens or other

judgments or debts asserted against the Premises or against Tenant's interests in the Premises under the Lease arising in connection with the Completion of the Building, and (iii) performing all contracts or undertakings of Tenant with any contractors, subcontractors, materialmen, suppliers or operators (including, without limitation, the Hotel Operator Management Agreement) to cause the Completion of the Building as set forth in the Lease. A copy of any notice of Default under the Lease shall be sent by Landlord concurrently to Guarantor (though failure to do so shall not be deemed to mitigate or waive any such Default, except to the extent that Guarantor is specifically and expressly designated a recipient of any such notice under the Lease), and notwithstanding anything to the contrary contained in this Guaranty, Landlord may not proceed against Guarantor until Tenant's applicable period of cure under the Lease has elapsed.

(c) Guarantor acknowledges that (i) the Condominium Board shall become the Tenant under the Lease upon the Condominium Date and that the Obligations after the Condominium Date with respect to the Completion of the Building will remain the obligation of the Declarant, (ii) certain of such Obligations will be assumed by the Hotel Unit Sublessee, (iii) the Condominium Board, as Tenant under the Ground Lease after the Condominium Date, shall not have the Obligations with respect to the Completion of the Building, and no Default under the Lease will arise as a result of any failure with respect to such Obligations, and (iv) for purposes of this Guaranty, the reference in Article 11 of the Lease with regard to the Completion of the Building and in clauses (x) and (y) of Section 19.01 (a) of the Lease to "Tenant" shall be deemed to be a reference to Declarant. Notwithstanding the foregoing, Guarantor agrees and acknowledges that the Obligations of Guarantor hereunder shall continue from and after Condominium Date.

2. This Guaranty is an absolute, present, primary, continuing, unconditional and irrevocable guaranty of payment and performance of the Obligations (and this is not merely a guaranty of collection). This Guaranty shall be enforceable against Guarantor without the necessity of (a) any suit or proceedings on Landlord's part of any kind or nature whatsoever against Tenant or (b) (except as otherwise expressly provided in this Guaranty) any notice of non-performance, or any notice of acceptance of this Guaranty, or any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives.

3. The Obligations of Guarantor hereunder shall be absolute and unconditional, shall not be subject to any counterclaim (other than a compulsory counterclaim), set-off, recoupment, deduction, cross-claim or defense based upon any claim Guarantor may have against Landlord or Tenant and shall remain in full force and effect without regard to, and shall not be released, discharged or terminated, or in any other way affected by, any circumstance or condition (whether or not Guarantor shall have any knowledge or notice thereof) except as otherwise expressly set forth herein and except for (x) payment or performance of the applicable Obligation or (y) any counterclaim, set-off, recoupment, deduction, cross-claim, defense or other right or remedy expressly permitted to Tenant and/or

Declarant under the terms and provisions of the Lease (any item described in this clause (y), a "**Permitted Defense**"), it being agreed and acknowledged that the agreement between the parties that the Condominium Board, as Tenant under the Ground Lease, after the Condominium Date, shall not have the Obligations with respect to the Completion of the Building shall not be deemed a Permitted Defense. Guarantor hereby expressly acknowledges and agrees that this Guaranty shall be a continuing guaranty and that the validity of this Guaranty and the obligations and liability of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of (a) any assignment, termination, expiration, invalidity or unenforceability of the Lease, or any mortgaging, pledging, encumbering or other alienation of, or with respect to, Tenant's interests in the Lease or the Premises or (b) any modification of the Lease, whether pursuant to the Lease or by subsequent agreement of Landlord and Tenant or their respective successors and assigns, or (c) any bankruptcy, insolvency, reorganization, arrangement, composition, liquidation, rehabilitation, assignment for the benefit of creditors, receivership or trusteeship, or similar or dissimilar proceeding or circumstance involving or affecting Tenant or Tenant's successors or assigns whether or not notice thereof is given to Guarantor (any limitation on or discharge of the liability of Tenant in such proceeding shall not diminish, limit, impair, abate, defer, modify or otherwise affect the liability of the Guarantor hereunder), or (d) any assignment, conveyance, extinguishment, merger or other transfer, voluntary or involuntary (whether by operation of law or otherwise), of all or any part of the interest of Tenant in the Lease or the Premises or (e) any matter or thing whatsoever, whether or not specifically mentioned herein, other than full performance of the Obligations.

4. No failure or delay on the part of Landlord in exercising any right, power or privilege under this Guaranty shall operate as a waiver of or otherwise affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

5. Guarantor represents and warrants to Landlord as follows:

5.1. Guarantor is a [_____] duly organized, validly existing and in good standing under the laws of the State of New York and is qualified or registered to do business under the laws of each other jurisdiction, if any, in which such qualification or registration is necessary to enable it to conduct the business in which it is engaged in accordance with applicable laws and regulations.

5.2. The execution, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary [_____] action. The execution of this Guaranty by the person signing on behalf of Guarantor has been duly authorized by all necessary [_____] action.

5.3. Guarantor has the full power, authority and legal right to execute and deliver, and to perform and observe the provisions of, this Guaranty, including, without limitation, the performance of all obligations hereunder.

5.4. No authorization, approval, consent or permission (governmental or otherwise) of any court, agency, commission or other authority or entity is required for the due execution, delivery, performance or observance by Guarantor of this Guaranty. Guarantor agrees that if, due to a change in law or otherwise, any such authorization, approval, consent, filing or permission shall be required in the future in order to permit or effect performance of the obligations of Guarantor under this Guaranty, Guarantor shall promptly inform Landlord or any of its respective successors or assigns and shall obtain such authorization, approval, consent, filing or permission.

5.5. Neither the execution or delivery of this Guaranty, nor the consummation of the transactions herein contemplated, nor the compliance with the terms and provisions hereof, conflict or will conflict with or result in a breach or default of (a) any of the terms, conditions or provisions of the [_____] agreement or similar formation and operating documents of Guarantor, or (b) any law, order, writ, injunction or decree of any court or government authority.

5.6. The financial statements (the "**Financial Statements**") dated _____ prepared by _____ and delivered to Landlord by, or on behalf of, Guarantor in connection with the execution and delivery of this Guaranty have been prepared (except to the extent otherwise therein indicated) in conformity with the Accounting Principles and present fairly and accurately, in all material respects, the financial position of Guarantor as of the date of such statements. There has been no material adverse change in the business or condition, financial or otherwise, or results of operation or prospects of Guarantor since the date of the Financial Statements.

5.7. Since the date of the Financial Statements, there has been no sale, lease, assignment or transfer of any material portion of Guarantor's assets, other than to persons that are not affiliates of Guarantor for fair consideration and in the ordinary course of business, consistent with past practice.

6. Guarantor covenants and agrees as follows:

6.1. Guarantor will maintain its [_____] existence in full force and effect so long as this Guaranty is outstanding.

6.2. Any merger or consolidation in which Guarantor is not the surviving party shall be preconditioned upon the surviving party (the "**Surviving Guarantor**") expressly assuming the obligations of Guarantor pursuant to this Guaranty. In addition, the Surviving Guarantor shall reaffirm Guarantor's obligations under this Guaranty by executing and delivering such resolutions, authorizations and confirmations as Landlord shall reasonably request, all in form acceptable to Landlord.

7. It is a condition of the grant, execution and delivery of the Lease that Guarantor execute and deliver this Guaranty. Guarantor represents that as of the date hereof it is an Affiliate of the initially named Tenant of the Lease and will, directly or indirectly, derive a substantial economic benefit from the execution of the Lease and the conversion of the Tenant's leasehold interest under the Lease to the condominium form of ownership. Guarantor acknowledges and agrees that the grant, execution and delivery of the Lease by Tenant is in Guarantor's best interests and Guarantor expects to derive benefit therefrom, and Guarantor has received adequate and fair equivalent value for this Guaranty. Guarantor makes this Guaranty knowing that Landlord will rely hereon in leasing the Premises to Tenant. Guarantor conclusively acknowledges that Landlord's reliance hereon is in every respect justifiable and Guarantor received adequate and fair equivalent value for this Guaranty.

8. Guarantor shall have the right to deliver a guaranty from another Person (provided such substitute guarantor then has a minimum net worth, computed in accordance with the Accounting Principles, consistently applied, of at least $200,000,000 and then has contributed capital of at least $300,000,000) substantially in the form and substance of this Guaranty. Upon confirmation by Landlord that Guarantor has complied with the requirements in the immediately preceding sentence (which confirmation shall be given or withheld by Landlord within ten (10) days after delivery to Landlord of the documents expressly required in the immediately preceding sentence), this Guaranty shall be deemed null and void and of no further force and effect and Guarantor shall be released from any and all further obligations hereunder and such substitute guaranty shall be deemed the "Guaranty" for all purposes hereof and under the Lease and such substitute guarantor shall be deemed the "Guarantor" for all purposes hereof and under the Lease.

9. Guarantor and Landlord acknowledge and agree that all disputes arising, directly or indirectly, out of, or relating to, this Guaranty shall be dealt with and adjudicated in the state courts of New York or the Federal courts sitting in New York. Guarantor hereby expressly and irrevocably submits the person of Guarantor to the jurisdiction of such courts in any suit, action or proceeding arising, directly or indirectly, out of, or relating to, this Guaranty. So far as is permitted under the applicable law, this consent to personal jurisdiction shall be self operative and no further instrument or action, other than service of process in one of the manners specified in this Guaranty, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon the person of Guarantor in any such court.

10. Provided that service of process is effected upon Guarantor in one of the manners specified in this Guaranty or as otherwise permitted by law, Guarantor irrevocably waives, to the fullest extent permitted by law, and agrees not to assert, by way of motion, as a defense or otherwise, (a) any objection which it may have or may hereafter have to the laying of the venue of any such suit, action or proceeding brought in such a court as is mentioned in the previous Section, (b) any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum or (c) any claim that it is not personally subject to the jurisdiction of the above-named courts. Provided that service of process is effected upon Guarantor in one of the manners hereafter specified in this Guaranty or as otherwise permitted by law, Guarantor agrees that final judgment from which Guarantor has not or may not appeal or further appeal in any such suit, action or proceeding brought in such a court of competent jurisdiction shall be conclusive and binding upon Guarantor and may, so far as is permitted under applicable law, be enforced in the courts of any state or any Federal court and in any other courts to the jurisdiction of which Guarantor is subject, including, without intending any limitation, as to the Guarantor, the courts of New York by a suit upon such judgment and that Guarantor will not assert any defense, counterclaim, or set off in any such suit upon such judgment.

11. Guarantor hereby consents to process being served in any suit, action or proceeding of the nature referred to in this Guaranty by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to Millennium Partners LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with a copy to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attention: Eric R. Landau, Esq., or to any other address of which Guarantor shall have given written notice to Landlord with notice to Tenant in the manner provided in the Lease.

12. Guarantor represents and warrants that it is not entitled to immunity from judicial proceedings and agrees that, in the event Landlord brings any suit, action or proceeding in New York or any other jurisdiction to enforce any obligation or liability of Guarantor arising, directly or indirectly, out of or relating to this Guaranty, no immunity from such suit, action or proceeding will be claimed by or on behalf of Guarantor.

13. Nothing in this Guaranty shall affect the right of Landlord to serve process in any manner permitted by law or limit the right of Landlord or any of its respective successors or assigns to bring proceedings against Guarantor in the courts of any jurisdiction or jurisdictions.

14. Anything herein to the contrary notwithstanding, if Guarantor shall breach the covenant of Guarantor set forth in Section 1 of this Guaranty to cause the Completion of the Building in accordance with the terms and provisions of the Lease, in addition to all other remedies available to Landlord by reason of such breach, Landlord shall have the right to obtain specific performance of Guarantor's obligations hereunder with respect thereto.

15. All remedies afforded to Landlord by reason of this Guaranty are separate and not cumulative and it is agreed that no one of such remedies, whether exercised by Landlord or not, shall be deemed to be in exclusion of any other remedy available to Landlord and shall not limit or prejudice any other legal or equitable remedy which Landlord may have.

16. If any provision of this Guaranty or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Guaranty or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid shall not be affected thereby and each provision of this Guaranty shall be valid and enforced to the fullest extent permitted by law.

17. **GUARANTOR (AND BY ITS ACCEPTANCE HEREOF, LANDLORD) EACH HEREBY WAIVES TRIAL BY JURY AND THE RIGHT THERETO IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE, ARISING ON, UNDER OR BY REASON OF OR RELATING TO, THIS GUARANTY OR ANY AGREEMENT COLLATERAL HERETO.**

18. No right or benefit in favor of Landlord shall be deemed waived, no obligation or liability of Guarantor hereunder shall be deemed modified, diminished, released, compromised, extended, discharged or otherwise affected, and no provision or term hereof may be amended, modified or otherwise changed except by an instrument in writing, specifying the same, duly executed by Landlord nor shall any waiver be applicable, except in the specific instance for which it is given.

19. The laws of the State of New York applicable to contracts made and to be performed wholly within the State of New York shall govern and control the validity, interpretation, performance and enforcement of this Guaranty.

20. Guarantor unconditionally waives, to the full extent permitted by applicable law, the following:

(a) notice of acceptance of this Guaranty and notice of any of the matters referred to in Sections 2 and 3 hereof;

(b) (except as otherwise expressly provided in this Guaranty) all notices which may be required by statute, rule of law or otherwise to preserve intact any rights which Landlord may have against Guarantor under this Guaranty, including, without limitation, notice of any failure on the part of Tenant to pay and perform the Obligations;

(c) except for any Permitted Defense, any right to the enforcement, assertion or exercise of any right, power or remedy conferred in the Lease or otherwise with respect to the payment and performance of the Obligations, except after full satisfaction of all Obligations; provided, however, if Tenant shall cease to be an Affiliate of Guarantor and if

any recovery by Guarantor of any payment from Tenant shall not prejudice in any manner whatsoever any present or future claim, counterclaim, cause of action, recoupment, recovery or other right or remedy which Landlord may at any time have against Tenant, then, in such event, Guarantor may recover any such payment from Tenant prior to full satisfaction of all Obligations;

(d) any requirement that Landlord act with diligence in enforcing or preserving its rights under the Lease or this Guaranty;

(e) any right to require Landlord to proceed against or exhaust its recourse against Tenant or any security or collateral held by Landlord at any time for the payment and performance of the Obligations or to pursue any other remedy in its power before being entitled to payment from Guarantor under this Guaranty or before proceeding against Guarantor;

(f) any failure by Landlord to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of Tenant or any other Person;

(g) any claim or defense based upon an election of remedies by Landlord or any intentional or unintentional act or omission of Landlord which destroys or otherwise impairs the subrogation rights, if any, of Guarantor or the right of Guarantor (after payment or performance of the Obligations) to proceed against Tenant for reimbursement, or both;

(h) except any Permitted Defense, any defense based upon the addition, substitution or release, in whole or in part, of any Person(s), including, without limitation, another guarantor, primarily or secondarily liable for or in respect of the Obligations;

(i) any rights or defenses based upon an offset by Guarantor against any obligation now or hereafter owed to Guarantor by Tenant; and

(j) (except as otherwise expressly provided in this Guaranty) all other notices which may or might be lawfully waived by Guarantor;

it being the intention hereof that Guarantor shall remain liable as principal, to the extent set forth in this Guaranty, until the payment and performance in full of the Obligations as set forth herein, notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of Guarantor except the payment and performance in full of the Obligations and except any Permitted Defense. No delay by Landlord in exercising any rights and/or powers hereunder or in taking any action to enforce any of Tenant's Obligations shall operate as a waiver as to such rights or powers or in any manner prejudice any and all of the Landlord's rights and powers hereunder against Guarantor. It is the intention of Guarantor under this Guaranty that (except as otherwise expressly provided in this Guaranty) as long as any of the Obligations remain unsatisfied, the Obligations of Guarantor hereunder shall not be

discharged except in accordance with the terms hereof or by payment and/or performance and then only to the extent of such payment and/or performance.

21. Guarantor hereby agrees to indemnify and hold Landlord harmless from and against any liability, claims, cost or expense (including, without limitation, court costs and the reasonable fees, costs and expenses of Landlord's counsel) incurred in connection with or as a result of breach by Guarantor of any of its Obligations hereunder, or the enforcement of Guarantor's obligations under this Guaranty or the protection of Landlord's rights under this Guaranty.

22. Guarantor is fully aware of the financial condition of Tenant and is executing and delivering this Guaranty based solely upon Guarantor's own independent investigation of all matters pertinent hereto and is not relying in any manner upon any representation or statement made by Landlord. Guarantor represents and warrants that Guarantor is in a position to obtain, and Guarantor hereby assumes full responsibility for obtaining, any additional information concerning Tenant's financial condition and any other matters pertinent hereto as Guarantor may desire and Guarantor is not relying upon or expecting Landlord to furnish to Guarantor any information now or hereafter in Landlord's possession concerning the same or any other matter. By executing this Guaranty, Guarantor knowingly accepts the full range of risks encompassed within a contract of this type, which risks Guarantor acknowledges.

23. So long as any of the Obligations are unpaid or not performed and this Guaranty is in effect, if a petition under the Bankruptcy Code is filed by or against Tenant, Guarantor agrees to file all claims against any Tenant in any bankruptcy or other proceeding in which the filing of claims is required by law in connection with indebtedness owed by any Tenant to Guarantor and to assign to Landlord all rights of Guarantor thereunder up to the amount of such indebtedness. In all such cases the Person or Persons authorized to pay such claims shall pay to Landlord the full amount thereof to the full extent necessary to pay, and/or cause the performance of, the Obligations and Guarantor hereby assigns to Landlord all of Guarantor's rights to all such payments to which Guarantor would otherwise be entitled but not to exceed the full amount necessary for the payment and performance of the Obligations. In the event that, notwithstanding the foregoing, any such payment shall be received by Guarantor before all sums owed by Tenant to Landlord in respect of the Obligations shall have been finally paid and performed in full, such payment shall be held in trust for the benefit of and shall be paid over to Landlord in accordance with the provisions of the preceding sentence. Furthermore, notwithstanding the foregoing and except to the extent that any sums owed by Tenant to Landlord with respect to the Obligations shall have been finally paid in full, the liability of Guarantor hereunder shall in no way be affected by:

(a) the release or discharge of Tenant in any creditors', receivership, bankruptcy or other proceedings; or

(b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy resulting from the operation of any present or future provisions of the Bankruptcy Code or other statute or from the decision in any court.

24. Guarantor shall not have any right of subrogation against Tenant by reason of any payment by Guarantor under this Guaranty unless and until all of the Obligations of Tenant to Landlord shall have been paid, performed and/or satisfied in full. Except as otherwise expressly provided in this Guaranty, Guarantor hereby irrevocably and unconditionally agrees that in the event that, notwithstanding the preceding sentence, Guarantor has any subrogation or other rights against Tenant by virtue of this Guaranty, any such claims, direct or indirect, that Guarantor may have by subrogation rights or other form of reimbursement, against Tenant or to any security or any interest therein, by virtue of this Guaranty or as a consequence of any payment made by Guarantor pursuant to this Guaranty, shall be and such rights, claims and indebtedness are, hereby deferred, postponed and fully subordinated in time and right of payment to the prior payment, performance and satisfaction in full of the Obligations and all other obligations of Guarantor to Landlord under this Guaranty for so long as this Guaranty shall remain in effect. Except as otherwise expressly provided in this Guaranty, until payment and performance in full of all of the Obligations, Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Tenant to Guarantor in respect of any such subrogation rights arising by virtue of payments made pursuant to this Guaranty, and hereby assigns such rights or indebtedness to Landlord, including the right to file proofs of claim and to vote thereon in connection with any case under the Bankruptcy Code, including the right to vote on any plan of reorganization. In the event that any payment on account of any such subrogation rights shall be received by Guarantor in violation of the foregoing, such payment shall be held in trust for the benefit of Landlord and, until the Obligations shall have been finally paid in full or performed, shall be paid to Landlord for application to the Obligations.

25. Guarantor shall be conclusively bound in any jurisdiction, by the judgment in any action by Landlord against Tenant in connection with the payment and performance of the Obligations, as if Guarantor were a party to such action even if not so joined as a party. A copy of all demands, pleadings and other papers in connection with any such action shall be sent by Landlord concurrently to Guarantor.

26. Guarantor agrees at any time and from time to time upon the reasonable request by Landlord to execute and deliver any additional documents which may be reasonably necessary in order to assure to Landlord the full benefits of this Guaranty.

27. This Guaranty shall be binding upon Guarantor and its successors and assigns and inure to the benefit of Landlord and its respective successors and assigns.

IN WITNESS WHEREOF, Guarantor has duly executed and hereby delivers this Guaranty as of the day and year first above written.

[_____]

By :_____
Name:_____
Title:_____

EXHIBIT Q

HOTEL UNIT LEASE

THIS HOTEL UNIT LEASE (this "Lease") dated as of the 1st day of January, 2000, by and between MILLENNIUM BPC DEVELOPMENT LLC, a New York limited liability company, having an office at c/o Millennium Partners, 1995 Broadway, New York, New York 10023, as landlord ("Millennium" or "Lessor"), and BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, as tenant ("BPCA" or "Lessee").

WITNESSETH:

WHEREAS, pursuant to that certain Ground Lease dated as of the date hereof, between BPCA, as landlord, and Millennium, as tenant (such lease, as the same may be amended, modified, supplemented or restated from time to time, the "Ground Lease"), BPCA leased to Millennium, or its permitted successors or assigns thereunder, certain Land known as Site 1 located in Battery Park City, New York, New York, and more particularly described on Exhibit A attached hereto and made a part hereof;

WHEREAS, Millennium, as Tenant under the Ground Lease, is constructing the Building on the Land, containing, among other things, the Hotel Portion, the Residential Portion and the Public Amenity Space, subject to and in accordance with the applicable provisions of the Ground Lease, although Completion of the Building may not have occurred yet;

WHEREAS, in connection with the execution of the Ground Lease, Millennium has requested and BPCA has agreed that the Tenant under the Ground Lease be permitted, subject to the terms and provisions of Article 43 of the Ground Lease, to submit its interest in the Premises under the Ground Lease to the condominium form of ownership pursuant to the provisions of the Condominium Act, as more specifically provided in Article 43 of the Ground Lease;

WHEREAS, in connection with such conversion to the condominium form of ownership, Millennium has requested that BPCA make, and BPCA has agreed to make, certain accommodations to Tenant under the Ground Lease, including the waiving of BPCA's rights and remedies as landlord to terminate the tenancy of the Residential Unit Owners and to repossess the areas of the Building comprising the Residential Units upon the occurrence of Events of Default under the Ground Lease (except as otherwise expressly provided in Article 43 of the Ground Lease);

WHEREAS, Millennium has not requested and BPCA has not agreed to grant such accommodations with respect to the rights and remedies as landlord to terminate the tenancy of the Hotel Unit Owner and to repossess the Hotel Unit or the areas of the Building comprising the Hotel Portion, and the parties have agreed that BPCA, as the sublessor under the Hotel Unit Sublease, should have all of the substantive rights and remedies as the Landlord under the Ground Lease with respect to the Hotel Unit without the limitations on remedies contained in Article 43 and Section 24.17 of the Ground Lease, as more particularly set forth in the Hotel Unit Sublease;

WHEREAS, the parties have agreed to implement the foregoing understanding and agreement with respect to the Hotel Unit by executing at the time of the execution of the Ground Lease, and releasing from escrow under the Hotel Unit Escrow Agreement, on the Condominium Date, this Lease pursuant to which the Hotel Unit will be leased by Millennium to BPCA and the Hotel Unit Sublease pursuant to which the Hotel Unit will be subleased by BPCA to Millennium;

WHEREAS, the parties are entering into this Lease and the Hotel Unit Sublease to reflect and effectuate, inter alia, their agreement that BPCA, as sublessor under the Hotel Unit Sublease, will have equivalent rights and remedies under the Hotel Unit Sublease with respect to the Hotel Unit that BPCA would have had under the Ground Lease if BPCA had not agreed to make the accommodations to Millennium pursuant to Article 43 of the Ground Lease, all as more fully set forth in Article 43 of the Ground Lease, this Lease and the Hotel Unit Sublease;

WHEREAS, it is the intention of the parties hereto that, pursuant to the terms of this Lease, Lessor will lease, assign and transfer to BPCA all of the rights of Lessor as the Unit Owner of the Hotel Unit and as Sponsor and Declarant with respect to the Hotel Unit for the Hotel Lease Term (as defined below) and otherwise on the terms set forth herein; and

WHEREAS, it is a condition precedent to the conversion by the Tenant of its leasehold interest under the Ground Lease to the condominium form of ownership pursuant to provisions of Article 43 of the Ground Lease and the effectuation of the Initial Unit Transfer that this Lease be released from escrow pursuant to the Hotel Unit Escrow Agreement and then be in full force and effect.

NOW THEREFORE, in consideration of the premises and the agreements set forth herein and for Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. (a) Lessor does hereby demise and sublease to Lessee, and Lessee does hereby sublease from Lessor, the Hotel Unit, together with all of the appurtenances thereto and all the estate and rights of Lessor therein, on the terms and provisions of this Lease.

(b) Lessor further irrevocably and unconditionally leases, delegates, transfers and assigns to Lessee, and Lessee hereby accepts from Lessor, all of Lessor's right, title and interest under the Ground Lease, the Declaration and the other Condominium Documents, as such right, title and interest pertains to the Hotel Unit, including, without limitation, all appurtenant rights of Lessor under the Condominium Documents and Ground Lease, any voting rights of Lessor under the Condominium Documents in its capacity as owner of the Hotel Unit, Lessor's right as the owner of the Hotel Unit to vote on any matters to be voted on by the Condominium Unit Owners and any right to amend, enforce or approve the amendment or enforcement of the Ground Lease and the Condominium Documents. Such lease, sublease, transfer and assignment shall be exclusive to Lessee, and during the Hotel Lease Term, Lessor shall not be entitled to exercise any of such rights, except as permitted by the Hotel Unit Sublease during the term of the Hotel Unit Sublease.

SECTION 2. (a) The effectiveness of the terms and conditions of this Lease and the term of this Lease (the "Hotel Lease Term") shall commence on the Condominium Date (the "Hotel Lease Commencement Date") and shall terminate on June 16, 2069. The Hotel Lease Term is not subject to termination by Lessor for any reason. The parties intend that this Lease is fully paid-up and non-terminable, except with the express written consent of the parties hereto and except upon the termination of the Ground Lease.

(b) Anything herein to the contrary notwithstanding, this Lease shall terminate not later than one day prior to the scheduled expiration of the Term of the Ground Lease. The parties intend that this instrument shall be a sublease of the Lessor's leasehold condominium interest in the Hotel Unit, and not an assignment of the Ground Lease.

SECTION 3. Lessor hereby acknowledges receipt of the sum of Ten and 00/100 Dollars ($10.00) from Lessee, which sum constitutes full payment of rent for the entire Hotel Lease Term. Lessee shall not be obligated to pay any further Rent hereunder at any time during the Hotel Lease Term; provided, however, that upon the termination of the Hotel Unit Sublease, Lessee shall pay directly to the Condominium Board Common Charges attributable to the Hotel Unit other than any Rent payable under the Ground Lease described in Section 5 of the Hotel Unit Sublease (other than Section 5(e)).

SECTION 4. In consideration of the transactions contemplated by the Ground Lease, this Lease and the Hotel Unit Sublease, Lessor hereby grants to Lessee (or its nominee or designee) the right and option to purchase the Hotel Unit for the sum of Ten and 00/100 Dollars at any time during the Hotel Lease Term after the termination of the Hotel Unit Sublease. In the event that the Hotel Unit Sublease is terminated, Lessee may at any time thereafter during the Hotel Lease Term exercise its right to purchase from Lessor, and, upon such exercise, Lessor shall sell to Lessee (or its nominee or designee), the Hotel Unit for the purchase price of Ten and 00/100 Dollars. Such option may be exercised by delivering to Lessor written notice stating Lessee's election to exercise the option, together with the purchase price of Ten Dollars ($10.00). Within seven (7) days of such written notice, Lessor shall convey good and marketable title to

the Hotel Unit to Lessee (or its nominee or designee) by bargain and sale deed (with covenants against grantor's acts), in proper form for recording, free and clear of all liens, charges or encumbrances other than the Title Matters, the Condominium Documents approved by the Landlord under the Ground Lease, any liens, charges or encumbrance approved by the Landlord under the Ground Lease or Lessee in writing (but specifically not including and free of the liens of any Mortgages or subleases (as to which a Qualifying Sublease Non-Disturbance and Attornment Agreement has not been entered into) permitted under the Hotel Unit Sublease or the Ground Lease) or any liens, charges or encumbrance created by Lessee or the Landlord under the Ground Lease. The parties hereto acknowledge that Lessee will suffer irreparable damages for which money damages alone are not an adequate remedy in the event that Lessor does not convey title to the Hotel Unit to Lessee in accordance with the provisions hereof, and Lessor hereby agrees that, in case of any breach by Lessor of such provisions, Lessee shall be entitled to specific performance or other equitable relief, in addition to any remedies available at law.

SECTION 5. Lessor covenants that Lessee shall and may peaceably and quietly have, hold and enjoy the Hotel Unit during the Hotel Lease Term without molestation or disturbance by or from Lessor or any person claiming through Lessor and free of any encumbrances created or suffered by Lessor, except those encumbrances, liens or defects of title created or suffered by Lessee or the Landlord under the Ground Lease, and the Ground Lease, the Hotel Unit Sublease, the Title Matters and the Condominium Documents approved by the Landlord under the Ground Lease and any encumbrance, liens or defects of title approved by the Landlord under the Ground Lease or Lessee in writing.

SECTION 6. All notices and other communications in connection with this Lease and the transactions contemplated hereunder shall be in writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose if given or served as follows:

If by Lessee, by personal delivery with receipt acknowledged or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, addressed to Lessor c/o Millennium Partners LLC, 1995 Broadway, New York, New York 10023, Attn: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55th Street, New York, New York 10022, Attn: Eric R. Landau, Esq.; or to such other address(es) and attorneys as Lessor may from time to time designate by notice given to Lessee as aforesaid; and

If by Lessor, by personal delivery with receipt acknowledged or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, addressed to Lessee at One World Financial Center, New York, New York 10281, Attn: President (with a copy, given in the manner provided above, addressed to Lessee's General Counsel, at the address set forth above or at such other address as Lessee may from time to time designate by notice to Lessor as aforesaid) and with an additional copy to Torys,

237 Park Avenue, NY, NY 10017, Attn: Miroslav M. Fajt, Esq.; or to such other address(es) and attorneys as Lessee may from time to time designate by notice given to Lessor as aforesaid.

Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received). Any notice sent by Lessor to Lessee may be sent by Lessor's agent or attorneys.

SECTION 7. This Lease may not be modified, amended, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of any such modification, amendment, changes, discharge or termination is sought.

SECTION 8. This Lease and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements to be performed entirely within such state (without regard to the principles of conflicts of laws).

SECTION 9. The parties hereto hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Lease.

SECTION 10. The statements and facts set forth in the recitals of this Lease are true and correct, and are incorporated herein by reference and made a part hereof, and each party shall be entitled to rely on them as if they were fully set forth in this Section 10.

SECTION 11. Lessor hereby grants to Lessee effective as of the Hotel Lease Commencement Date, the exclusive right to exercise any and all of Lessor's right, title and interest in, to and under any warranties, guaranties, service or other contracts or agreements, permits and licenses relating to the Hotel Unit or any equipment, fixtures, furniture or other property therein, it being understood, however, that subject to the applicable terms of the Hotel Unit Sublease, the Hotel Unit Sublessee, in its capacity as the Hotel Unit Sublessee, shall have the right to exercise such rights while the Hotel Unit Sublease is in effect.

SECTION 12. Lessor shall not exercise any of its rights to vote on or to approve any modification, amendment or surrender of any of the Condominium Documents with respect to the Hotel Unit during the Hotel Lease Term without the prior written consent of Lessee, it being understood, however, that subject to the applicable terms of the Hotel Unit Sublease, the Hotel Unit Sublessee, in its capacity as the Hotel Unit Sublessee, shall have the right to exercise such rights while the Hotel Unit Sublease is in effect.

SECTION 13. Lessor hereby covenants and agrees that it will not exercise or waive any of its rights under the Ground Lease or as Declarant or Sponsor under the Condominium Documents related to the Hotel Unit without the prior written consent of Lessee, it being understood, however, that subject to the applicable terms of the Hotel Unit Sublease, the Hotel Unit Sublessee, in its capacity as the Hotel Unit Sublessee, shall have the right to exercise such rights while the Hotel Unit Sublease is in effect. From and after the termination of the Hotel Unit Sublease, Lessor further covenants and agrees to promptly exercise or waive its rights as tenant under the Ground Lease or Declarant or Sponsor under the Condominium Documents with respect to the Hotel Unit as and when directed and authorized by Lessee.

SECTION 14. This Lease may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 15. Lessor and Lessee have executed a memorandum of this Lease and the option to purchase the Hotel Unit in recordable form which memorandum is intended to be released under the Hotel Unit Escrow Agreement and recorded by Lessor in the office of the City Register of the City of New York for the County of New York on the Hotel Lease Commencement Date. Lessee may, without the consent of Lessor, at any time thereafter also record this Lease in its entirety in such office. Lessor shall pay all filing, registration, recording and documentary stamp taxes, transfer taxes, fees, dues, impositions, assessments and charges in connection with this Lease, including, without limitation, the recording of the memorandum of this Lease and the recording of this Lease in its entirety by Lessee.

SECTION 16. Effective upon the termination of the Hotel Unit Sublease, Lessor and Lessee agree that, for the purpose of and in order to effectuate Lessee's rights pursuant to this Lease, Lessor, for itself and for any successor or assign or replacement landlord hereunder hereby irrevocably and unconditionally constitute and appoint Lessee as its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution, to execute, acknowledge and deliver any notice, document, certificate, paper, instrument or pleading and to do in its name, place and stead, all such acts, things and deeds for and on behalf of Lessor related to the Hotel Unit, under the Ground Lease, this Lease and the Condominium Documents which Lessor could or might do or which may be necessary, desirable or convenient in Lessee's sole discretion to effectuate the purposes of this Lease (such appointment, the "Power of Attorney"). The Power of Attorney and the rights, remedies, power and authority granted by Lessor to Lessee herein, including, without limitation, all appurtenant rights, are hereby declared by Lessor to be coupled with an interest and irrevocable for the entire Hotel Lease Term, and may be exercised by Lessee in the name of Lessor, in the name of the Lessee or in the names of Lessor and Lessee, as Lessee may at any time or from time to time determine, and Lessor hereby confirms and ratifies all acts and deeds taken or to be taken by Lessee in accordance with the Power of Attorney.

SECTION 17. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee or

leasehold estate in the Hotel Unit, the Premises or any part thereof by reason of the fact that the leasehold estate created by this Lease, or any interest therein, may be held, directly or indirectly, by or for the account of any Person who shall own such fee estate or Lessor's leasehold interest in the Hotel Unit, the Premises or any interest in such fee or leasehold estate, and no such merger shall occur until and unless all Persons at the time having an interest in such fee or leasehold estate and all Persons (including all Mortgagees) having an interest in the leasehold estate created by this Lease and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 18. Should any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable the parties hereby agree to modify such term or provision so that the remainder of this Lease shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Lease. The parties further agree to modify any such unenforceable provision of this Lease in lieu of severing such unenforceable provision from this Lease in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Lease, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Lease as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Lease be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Lease shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

SECTION 19. (a) Lessor shall have the right to sell, assign, make a Transfer, mortgage or otherwise encumber its interest in the Hotel Unit pursuant to and to the extent permitted by the terms and subject to the conditions of the Ground Lease and the Condominium Documents, provided that any such sale, assignment, mortgage or encumbrance shall be subject and subordinate to all of the terms and provisions of this Lease (including the option to purchase the Hotel Unit contained in Section 4 hereof), the Hotel Unit Sublease, the Ground Lease and the other Title Matters and provided that Lessor and the sublessee under the Hotel Unit Sublease shall at all times be the same Person.

(b) Lessee shall have the right to sell, assign, make a transfer, mortgage, sublease (only with respect to the Hotel Unit Sublease or only after the termination of the Hotel Unit Sublease) or otherwise encumber its interest hereunder to the same extent that it is permitted to effect any such transaction with respect to its interest as Landlord under the Ground Lease, provided that the same shall be subject and subordinate to all of the terms and provisions of this Lease, the Hotel Unit Sublease, the Ground Lease and the other Title Matters and provided that at all times the Landlord under the Ground Lease and Lessee and Sublessor under the Hotel Unit Sublease are the same Person.

SECTION 20. All capitalized terms used but not otherwise defined in this Lease shall have the respective meanings given such terms in the Ground Lease.

SECTION 21. Lessor and Lessee shall execute such documents as may be necessary or reasonably requested by the other party hereto to carry out and consummate the transactions contemplated by this Lease.

SECTION 22. Lessor and Lessee agree and acknowledge that Section 41.06 of the Ground Lease is hereby incorporated herein with the following changes: (a) all references to "Landlord" shall be to "Lessor" and (b) all references to "Tenant" shall be to "Lessee."

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the date first above written.

LESSOR:

MILLENNIUM BPC DEVELOPMENT LLC

By:_____
Name: Philip E. Aarons
Title: Vice President

LESSEE:

BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By:_____
Name: Timothy S. Carey
Title: President and CEO

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Philip E. Aarons, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My Commission Expires:

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

On the __ day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Timothy S. Carey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My Commission Expires:

Schedule A

Legal Description

Schedule A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

EXHIBIT R

HOTEL UNIT SUBLEASE

THIS HOTEL UNIT SUBLEASE (this "Sublease") dated as of the 1st day of January, 2000, by and between BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, as sublessor ("BPCA" or "Sublessor"), and MILLENNIUM BPC DEVELOPMENT LLC, a New York limited liability company, having an office at c/o Millennium Partners, 1995 Broadway, New York, New York 10023, as sublessee ("Millennium" or "Sublessee").

WITNESSETH:

WHEREAS, pursuant to that certain Ground Lease dated as of the date hereof, between BPCA, as landlord, and Millennium, as tenant (such lease, as the same may be amended, modified, supplemented or restated from time to time, the "Ground Lease"), BPCA leases to Millennium or its permitted successors or assigns certain Land known as Site 1 located in Battery Park City, New York, New York, and more particularly described on Exhibit A attached hereto and made a part hereof;

WHEREAS, Millennium, as Tenant under the Ground Lease, is constructing the Building on the Land, containing, among other things, the Hotel Portion, the Residential Portion and the Public Amenity Space, subject to and in accordance with the applicable provisions of the Ground Lease, although Completion of the Building may not have occurred yet;

WHEREAS, in connection with the execution of the Ground Lease, Millennium has requested and BPCA has agreed that Tenant under the Ground Lease be permitted, subject to the terms and provisions of Article 43 of the Ground Lease, to submit its interest in the Premises under the Ground Lease to the condominium form of ownership pursuant to the provisions of the Condominium Act, as more specifically provided in Article 43 of the Ground Lease;

WHEREAS, in connection with such conversion to the condominium form of ownership, Millennium has requested that BPCA make, and BPCA has agreed to make, certain accommodations to Millennium under the Ground Lease, including the waiving of BPCA's rights and remedies as landlord to terminate the tenancy of the Residential Unit Owners and to repossess areas of the Building comprising the Residential Units upon the occurrence of Events of Default under the Ground Lease (except as otherwise expressly provided in Article 43 of the Ground Lease);

WHEREAS, Millennium has not requested and BPCA has not agreed to grant such accommodations with respect to the rights and remedies as landlord to terminate the tenancy of the Hotel Unit Owner and to repossess the Hotel Unit or the areas of the Building

comprising the Hotel Portion, and the parties have agreed that BPCA, as sublessor under this Sublease, will have all of the rights and remedies as the landlord under the Ground Lease with respect to the Hotel Unit without the limitation on remedies contained in Article 43 and Section 24.17 of the Ground Lease, as more particularly set forth in this Sublease;

WHEREAS, the parties have agreed to implement the foregoing understanding and agreement with respect to the Hotel Unit by executing at the time of the execution of the Ground Lease, and releasing from escrow under the Hotel Unit Escrow Agreement, on the Condominium Date, the Hotel Unit Lease pursuant to which the Hotel Unit will be leased by Millennium to BPCA and this Sublease pursuant to which the Hotel Unit will be subleased by BPCA to Millennium;

WHEREAS, the parties are entering into this Sublease and the Hotel Unit Lease to reflect and effectuate, inter alia, their agreement that BPCA, as sublessor under this Sublease, will have equivalent rights and remedies under this Sublease with respect to the Hotel Unit that BPCA would have had under the Ground Lease if BPCA had not agreed to make the accommodations to Millennium pursuant to Article 43 of the Ground Lease, all as more fully set forth in Article 43 of the Ground Lease, this Sublease and the Hotel Unit Lease;

WHEREAS, it is the intention of the parties hereto that, pursuant to the terms of this Sublease, BPCA will sublease, assign and transfer to Millennium all of the rights of BPCA as the lessee of the Hotel Unit under the Hotel Unit Lease for the Hotel Unit Sublease Term (as defined below) and otherwise on the terms set forth herein; and

WHEREAS, it is a condition precedent to the conversion by the Tenant of its leasehold interest under the Ground Lease to the condominium form of ownership pursuant to the provisions of Article 43 of the Ground Lease and the effectuation of the Initial Unit Transfer that this Sublease be released from escrow pursuant to the Hotel Unit Escrow Agreement and then be in full force and effect.

NOW, THEREFORE, in consideration of the premises and agreements set forth herein and for Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Demise.

(a) Sublessor does hereby demise and sublease to Sublessee, and Sublessee does hereby sublease from Sublessor, the Hotel Unit, together with the appurtenances thereto and all the estate and rights of Sublessor therein leased to Sublessor pursuant to the Hotel Unit Lease, on the terms and provisions of this Sublease.

(b) During the Hotel Unit Sublease Term, Sublessor further irrevocably and unconditionally subleases, delegates, transfers and assigns to Sublessee, and Sublessee hereby accepts from Sublessor, all of Sublessor's right, title and interest with respect to the Hotel Unit leased, delegated, transferred and/or assigned by the lessor under the Hotel Unit Lease to Sublessor, as lessee under the Hotel Unit Lease, including, without limitation, all of the rights and privileges referred to in Sections 1, 11, 12 and 13 of the Hotel Unit Lease. Such sublease,

transfer and assignment shall be exclusive to Sublessee and its permitted successors and assigns during the Hotel Unit Sublease Term, and during the Hotel Unit Sublease Term, Sublessor, as tenant under the Hotel Unit Lease, shall not be entitled to exercise any of such rights and privileges, except as expressly permitted by this Sublease. All of such rights subleased, delegated, assigned and transferred to Sublessee hereunder shall terminate on the expiration or earlier termination of the Hotel Unit Sublease Term.

(c) Nothing hereto shall be construed as a lease, sublease, assignment, transfer or waiver of any of Sublessor's rights as landlord under the Ground Lease, it being understood and agreed that the terms and provisions of the Ground Lease, and Landlord's rights thereunder, shall at all times be and remain senior and superior to the terms and provisions hereof.

2. Incorporation of Ground Lease by Reference.

(a) Except as expressly provided herein, the Hotel Unit shall be subleased hereunder to the Sublessee on the same terms and conditions as are contained in the Ground Lease applicable to the Hotel Portion, the Hotel Unit and the Public Open Space, and such terms, provisions, covenants, and conditions of the Ground Lease are hereby incorporated by reference mutatis mutandis in and made part of this Sublease, with the same force and effect as though set forth in full herein, except as otherwise provided under the provisions of this Sublease; it being understood and agreed that for purposes of such incorporation, (i) Sublessor and Sublessee hereby agree (except as expressly provided in this Sublease) that Sublessee shall be obligated to abide by and perform all of the obligations of Tenant under the Ground Lease, to be performed during (but only to the extent the same are in respect of) the Hotel Unit Sublease Term, applicable to the Hotel Unit, the Hotel Portion and the Public Open Space, and Sublessee shall be entitled in respect thereof to all the rights of Tenant and benefits afforded to Tenant (including notices, grace periods and rights to cure and exercise self-help) under the Ground Lease; (ii) Sublessor shall be entitled to all the rights of Landlord under the Ground Lease applicable during the Term to the Hotel Unit, the Hotel Portion and the Public Open Space, (iii) the term "Landlord" in the Ground Lease shall refer to Sublessor hereunder, its successors and permitted assigns; (iv) the term "Tenant" therein shall refer to Sublessee hereunder, its successors and permitted assigns; (v) the term "this Lease" therein shall refer to this Sublease; (vi) the term "Term" therein shall refer to the Hotel Unit Sublease Term of this Sublease; (vii) the term "Premises" therein shall refer to the Hotel Unit, Hotel Portion and the Public Open Space; and (viii) the term "Rent" or "Rental" therein shall refer to the Rent or Rental hereunder. The rights and obligations of Sublessee hereunder which are to be performed during (but only to the extent the same are in respect of) the Hotel Unit Sublease Term, shall survive and extend beyond the termination of this Sublease to the extent such rights and obligations are rights or obligations of Tenant under the Ground Lease the survival of which is expressly provided for in the Ground Lease.

(b) In addition to the modifications to the provisions of the Ground Lease incorporated herein, which are set forth in, and are expressly excluded from this Sublease, the following provisions of the Ground Lease are specifically not incorporated in this Sublease:

(i) Section 3.01(a)(2)

(ii) Section 3.07

(iii) Section 3.09(a)

(iv) Section 4.03(a) (except that, notwithstanding the exclusion of Section 4.03(a), Sublessee shall in no event be obligated to pay Taxes)

(v) Sections 9.01(c) and 9.03

(vi) Sections 10.01(a)(i)(B)(a), and (e) and Section 10.01(a)(iii)

(vii) Section 10.01(b)(iv)

(viii) Section 10.01(c)(ii)

(ix) Section 10.01(f)

(x) Section 10.10(e)

(xi) Article 11 (except to the extent that such Article 11 pertains to the Hotel Unit, the Hotel Portion and the Public Open Space)

(xii) Section 19.01(a)(y)

(xiii) Section 23.01(b)(vii)

(xiv) Section 24.01(b) (except to the extent such Section pertains to the Hotel Portion, the Public Amenity Core and Shell and the Public Open Space)

(xv) Section 24.01(m)

(xvi) Section 24.17

(xvii) Article 26 (except for the obligations of Tenant to pay Civic Facilities Payment with respect to the Hotel Portion pursuant to Section 26.04(a), and the obligation of Tenant with respect to the Public Open Space pursuant to Sections 26.01 and 26.02)

(xviii) Article 27

(xix) Article 28

(xxi) Section 38.01(b)

(xxii) Article 42

(xxiii) Article 43

(c) In addition, for purposes of the foregoing incorporation by reference, the following provisions shall apply:

(i) For purposes of Sections 7.01(a)(vi), and 10.05 and Article 11 the term "Building" shall be deemed to refer to the Hotel Unit.

(ii) For purposes of Sections 7.02(a), 9.01(b), 9.03, 9.05, 12.01, 12.03, 24.01(l), and 33.02 and Article 13 the term "Building" shall be deemed to refer to the Hotel Unit and the FF&E and other personal property of Sublessee located in the Hotel Unit.

(iii) For purposes of incorporation of Section 12.01 of the Ground Lease, Section 12.01 shall be modified as follows: References to "roofs," "foundations," "vaults (other than vaults which are under the control, or maintained or repaired by, a utility company)" and "sidewalk hoists" shall be deemed deleted therefrom to the extent that they are not part of the Hotel Unit.

(iv) Notwithstanding anything to the contrary contained in this Sublease and/or the Ground Lease, the casualty restoration obligations and the condemnation restoration obligations of Sublessee pursuant to this Sublease shall be limited to FF&E located within the Hotel Unit and other personal property of Sublessee located in the Hotel Unit.

(v) Sublessee shall be bound by and shall agree to perform all of the terms and provisions of the Ground Lease expressly applicable to the Hotel Portion, the Hotel Unit, the Hotel Unit Owner and/or the Hotel Unit Sublessee, under the Ground Lease.

(d) All capitalized terms used but not otherwise defined in this Sublease shall have the respective meanings given such terms in the Ground Lease.

3. Term.

(a) The effectiveness of the terms and provisions of this Sublease and the term ("Hotel Unit Sublease Term") of this Sublease shall commence on the Condominium Date (the "Sublease Commencement Date") and shall terminate on June 15, 2069 ("Expiration Date"), unless sooner terminated pursuant to the provisions of this Sublease.

(b) Anything herein to the contrary notwithstanding, this Sublease shall terminate not later than one day prior to the scheduled expiration of the Term of the Hotel Unit Lease. The parties intend that this instrument shall be a sublease and not an assignment of the Ground Lease or the Hotel Unit Lease.

4. Title and Condition of Premises.

(a) Sublessee shall take possession of the Hotel Unit in its present "as is" condition. No representations or warranties have been made to Sublessee concerning the condition of the Hotel Unit, nor have any promises to remodel, change, alter, or improve the Hotel Unit been made by Sublessor or any party on behalf of Sublessor.

(b) The Hotel Unit is leased hereunder subject and subordinate to the Title Matters, the Hotel Unit Lease, the Ground Lease, the rights of any parties in possession thereof and the state of the title thereof as of the Sublease Commencement Date (except for any matters created by the Master Landlord or the Landlord under the Ground Lease after the date hereof), to any state of facts which an accurate survey or physical inspection thereof might show (except for any matters created by the Master Landlord or the Landlord under the Ground Lease after the date hereof), and to all zoning regulations, restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction. Sublessee acknowledges that Sublessee has prepared the Condominium Documents and has had the opportunity to review and read the Ground Lease, Hotel Unit Lease, Master Lease, all Title Matters and all other matters affecting its tenancy hereunder. Subject to the other applicable terms and provisions of this Sublease, Sublessee agrees to observe and be bound by all the terms contained in such documents which apply to the occupant or user of the Hotel Unit or a user of the General Common Elements. Subject to the other applicable terms and provisions of this Sublease, Sublessee agrees to observe all of the Rules and Regulations of the Condominium Board with respect to the Hotel Unit.

5. Rent.

(a) Sublessee shall pay directly to Landlord under the Ground Lease Hotel Base Rent as set forth in Section 3.01(a)(1) of the Ground Lease.

(b) Sublessee shall pay directly to Landlord under the Ground Lease the Civic Facilities Payment allocable to the Hotel Unit as set forth in Sections 3.04 and 26.04(a) of the Ground Lease.

(c) Sublessee shall pay directly to Landlord under the Ground Lease Hotel Percentage Rent as set forth in Sections 3.05 and 3.06 of the Ground Lease.

(d) Sublessee shall pay directly to Landlord under the Ground Lease the PILOT allocable to the Hotel Unit and Supplemental Hotel Base Rent as set forth in Sections 3.02, 3.03 and 3.10(f) of the Ground Lease.

(e) All amounts required to be paid by Sublessee pursuant to this Sublease, including, without limitation, Hotel Base Rent, PILOT with respect to the Hotel Unit (and, if applicable, the Public Amenity Space), Hotel Percentage Rent, Supplemental Hotel Base Rent, Impositions allocable to the Hotel Unit, and Civic Facilities Payments allocable to the Hotel Unit and other Common Charges allocable to the Hotel Unit (collectively, "Rental" or "Rent"), shall constitute rent under this Sublease and shall be payable in the same manner as set forth in the Ground Lease. Rental shall be absolutely net to Sublessor without any abatement, deduction, counterclaim, set-off or offset whatsoever except as specifically set forth in this Sublease, so that this Sublease shall yield, net, to Sublessor, Rental in each year during the Term and that Sublessee shall pay all costs, expenses and charges of every kind and nature relating to the Hotel Unit as provided herein or in the Ground Lease and incorporated herein by reference (except Taxes, if any, and except as otherwise provided in the Ground Lease and incorporated herein by reference) which may arise or become due or payable during or after (but attributable to a period falling within) the Hotel Unit Sublease Term.

(f) Sublessee shall pay directly to the Condominium Board Common Charges allocable or attributable to the Hotel Unit other than any Rent referred to in subsections (a) through (e) above.

(g) Rent payments received by Landlord under the Ground Lease pursuant to the terms hereof shall be deemed to be corresponding payments of Rent under the Ground Lease and shall discharge the obligation of Tenant under the Ground Lease to pay the corresponding payment under the Ground Lease and shall discharge the obligation of the Hotel Unit Owner to pay to the Condominium Board that portion of Common Charges that are attributable to such Rent.

(h) In the event that the Tenant under the Ground Lease shall have the right to offset any amounts that may be due to it from Landlord under the express terms and provisions of the Ground Lease as a result of Self-Help or any other reduction in rent due under the Ground Lease as expressly provided therein, the Sublessee shall have the corresponding right to offset amounts from any Rent due hereunder to the extent that such amounts are attributable or allocable to the Hotel Unit.

6. Hotel Covenants.

(a) During the Hotel Unit Sublease Term, Sublessee hereby assumes directly for the benefit of Sublessor and the Landlord under the Ground Lease all of the obligations and agreements required to be performed under the Ground Lease by the Hotel Unit Sublessee or Tenant under the Ground Lease with respect to or applicable to the Hotel Unit, the Hotel Portion and the Public Open Space and by the Hotel Unit Owner under the Condominium Documents and the Ground Lease from and after the dates hereof, including, without limitation, the provisions of Articles 3, 10, 23 and 26 of the Ground Lease if and to the extent applicable.

(b) Sublessee hereby also assumes all obligations of Tenant or the Declarant under the Ground Lease and the Condominium Documents, as the case may be, with respect to the Hotel Unit, Hotel Portion, the Public Open Space and the Public Amenity Space (to the extent provided in Section 6(e) hereof) which accrued prior to the Condominium Date and which remain unsatisfied on the Condominium Date and which are not assumed by the Condominium Board under the provisions of Article 43 of the Ground Lease or otherwise on the Sublease Commencement Date.

(c) Sublessee covenants and agrees to use all of its available legal rights and remedies to enforce compliance by the Condominium Board with the terms and provisions of the Ground Lease applicable to the Condominium Board as Tenant under the Ground Lease including, without limitation, such terms and conditions which are applicable to any General Common Elements under the Condominium Documents, the obligation of Tenant under the Ground Lease to pay rent (as defined in the Ground Lease) under the Ground Lease and the obligation of the Condominium Board to enforce compliance by the Residential Board and Residential Unit Owners with their respective obligations under or with respect to the Ground Lease and the Condominium Documents, and such obligation shall include the exercise by the Sublessee of its right to appoint a majority of the members of the Condominium Board and attend and otherwise participate in Condominium Board meetings, deliberations and voting. Such obligations of the Condominium Board do not include the payment by the Sublessee of the

amounts that constitute Rent hereunder, the obligations referred to in Section 6(a), (b) or (d) hereof and any other covenant applicable solely and exclusively to the Hotel Unit Owner under the Ground Lease and/or Condominium Documents. If enforcement of compliance by the Condominium Board with such terms and provisions of the Ground Lease requires that the Condominium Board make an assessment against the Unit Owners of Common Charges, the Sublessee shall use all of its available legal rights and remedies to exercise its power to control the Condominium Board to make and enforce such assessments against the Unit Owners and until such time as the Condominium Board shall have collected such assessment from all the Unit Owners, Sublessee shall deposit the portion of any such Common Charges allocable to the Hotel Unit in escrow with the Sublessor on such terms as the Sublessor shall reasonably determine (it being agreed and acknowledged that the deposit of such Common Charges with Sublessor shall be deemed to satisfy Sublessee's obligations with respect to such payment by the Hotel Unit Owner under the Ground Lease and Condominium Documents).

(d) Sublessee acknowledges that Sublessee only has the rights set forth in the terms and conditions of this Sublease (including those incorporated herein by reference). Sublessee shall comply with the terms, conditions and provisions of the Condominium Documents, the Ground Lease, and Master Lease with respect to or applicable to the Hotel Portion, the Hotel Unit and the Public Open Space subject to the other terms and provisions of this Sublease. Sublessee shall not perform any act, or fail to perform an act, if the performance or failure to perform would be a violation of or default in the Condominium Documents, Ground Lease, Hotel Unit Lease, the Master Lease or any other Title Matters. Sublessee shall not exercise any right or privilege under this Sublease, the performance of which would be a default in or violation of the Condominium Documents, the Ground Lease, this Sublease, the Master Lease or any other Title Matters.

(e) Sublessee hereby expressly assumes all obligations of Tenant or Declarant under the Ground Lease applicable to the Public Amenity Core and Shell and Public Amenity Space set forth in Section 3.02 of the Ground Lease with respect to the payment of PILOT until the Public Amenity Tax Assessment Date, Article 11 of the Ground Lease with respect to the construction of the Public Amenity Core and Shell, clause (x) of Section 19.01(a) of the Ground Lease and Section 23.06 of the Ground Lease.

(f) Sublessee hereby covenants to Sublessor that the Hotel Unit Owner and the Sublessee shall at all times during the Hotel Unit Sublease Term be the same Person, and that the Mortgagee(s) of the Hotel Unit shall at all times during the Hotel Unit Sublease Term be the same Person as the Mortgagee(s) of Sublessee's leasehold interest under this Sublease.

(g) Notwithstanding any provisions hereof to the contrary, in no event shall Sublessee take any action that would violate the provisions of Section 10.01(b)(iii) of the Ground Lease.

(h) To the extent that Sublessee or Sublessor complies with covenants and conditions imposed hereunder, such compliance shall be deemed compliance with corresponding covenants and conditions required to be performed by Tenant or Landlord, as applicable, under the Ground Lease.

(i) Sublessee shall not, without the prior consent of Sublessor, which consent may be withheld by Sublessor in Sublessor's sole discretion, submit Sublessee's subleasehold estate in the Premises, or any part thereof, to the condominium form of ownership pursuant to the provisions of Article 9-B of the Real Property Law of the State of New York, as it may be amended, or to a cooperative form of ownership.

7. Enforcement.

Sublessee covenants to notify Sublessor promptly upon learning of any condition which, with the giving of any notice or the passage of time, or both, might constitute a default, or any event of default, or matter upon which a default or event of default might be predicated, under the Ground Lease or any of the Condominium Documents, or might result in the termination or surrender, or partial termination or surrender, of the Ground Lease, or any of the Condominium Documents.

8. Subordination.

The parties hereto hereby acknowledge that, as required by Section 10.09 of the Ground Lease, this Sublease is subject and subordinate to the Ground Lease, the Master Lease, the Hotel Unit Lease and any other Title Matters and to the matters to which the Ground Lease, the Master Lease, and the Hotel Unit Lease are or shall be subordinate, and that in the event of termination, re-entry or dispossess by Landlord under the Ground Lease, Landlord may, at its option, take over all of the right, title and interest of Sublessor, as sublessor, under this Sublease, and Sublessee shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of this Sublease, except that Landlord shall not be subject to any offset, not expressly provided in this Sublease or incorporated herein by reference, which theretofore accrued to Sublessee against Sublessor.

9. New Lease.

In the event that the Ground Lease is terminated in accordance with the terms thereof after the Sublease Commencement Date and prior to the expiration of the Hotel Unit Sublease Term, Sublessor agrees, at the request of Sublessee made in writing within 30 says of such termination, to enter into a new lease with the Sublessee covering the space in the Building comprising the Hotel Portion, the Hotel Unit and the Public Open Space, on the same Rent and otherwise on substantially the same terms and provisions of this Sublease, but without any of the provisions pertaining to the condominium form of ownership contained in any of the Condominium Documents. Such new lease shall be entered into substantially in the same manner and on the same conditions as would be applicable if a new lease was being entered into with a lender pursuant to Section 10.11 of the Ground Lease, including the conditions set forth in Section 10.11(a) thereof.

10. Insurance.

It is understood and agreed that to the extent that any insurance coverage required under this Sublease is procured or maintained by the Condominium Board, as Tenant under the Ground Lease (such as casualty insurance), the Sublessee shall not be required to maintain duplicate insurance hereunder. To the extent that the Sublessee is obligated to procure and

maintain any insurance coverage, the applicable terms and provisions of the Ground Lease shall apply to such coverage and the adjustment and application of the proceeds of any such policies, which provisions are hereby incorporated herein mutatis mutandis. Notwithstanding anything to the contrary contained in this Sublease and/or the Ground Lease, Sublessee shall not be obligated to maintain insurance coverage described in Section 7.01(a)(i) of the Ground Lease with respect to the Building, except that Sublessee shall be required to insure, or cause to be insured, in substantially the same manner as provided in said Section 7.01(a)(i), all of the FF&E located in the Hotel Portion that is not affixed to the Building and insured by Tenant under the Ground Lease.

11. Termination.

Upon any termination of this Sublease in accordance with the terms hereof, by expiration of the Hotel Unit Sublease Term or otherwise, Sublessee shall immediately vacate the Hotel Unit and surrender possession thereof, including all key, codes, passwords and electronic passes, to Sublessor.

12. Events of Default; Sublessor's Remedies.

(a) The provisions of Article 24 of the Ground Lease are hereby incorporated by reference herein in the manner set forth in Section 2(a) without regard to the provisions of Section 24.17. The parties hereto hereby acknowledge and agree that Sublessor shall have all of the rights and remedies set forth in Article 24 of the Ground Lease (without the limitation set forth in Section 24.17) with respect to any Default or Event of Default by Sublessee hereunder.

(b) If the title to the Hotel Unit by the Hotel Unit Owner or the Sublessee hereunder shall be assigned, subleased, transferred, mortgaged or encumbered, or there shall be a Transfer, without Sublessor's (or Landlord's) approval to the extent required hereunder or under the Ground Lease or without compliance with the provisions of this Sublease or the Ground Lease applicable thereto and such transaction shall not be made to comply or voided ab initio within thirty (30) days after notice thereof from Sublessor to Sublessee any such event shall be an Event of Default hereunder.

(c) Sublessor and Sublessee hereby agree and acknowledge that none of the provisions of the Hotel Unit Lease or this Sublease shall diminish or otherwise adversely effect any of the rights and remedies of the Landlord under the Ground Lease with respect to the Tenant.

13. Quiet Enjoyment.

Sublessor covenants that Sublessee shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Sublease) peaceably and quietly have, hold and enjoy the Hotel Unit during the Hotel Unit Sublease Term without molestation or disturbance by or from Sublessor or any Person claiming through Sublessor and free of any encumbrances created or suffered by Sublessor, except for any encumbrances, liens or defects of title created or suffered by Sublessee, and the Ground Lease, the Hotel Unit Lease, the Condominium Documents, the Title Matters and any matters created by or consented to by Sublessee.

14. Sublessee's Representations.

Sublessee represents and warrants to Sublessor that: (i) Sublessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and is duly qualified and authorized to sublease the Hotel Unit and to do business in the State of New York; (ii) Sublessee has full power, authority and legal right to execute and deliver this Sublease and to observe and perform the provisions hereof, and the execution and delivery of this Sublease and the obligations of Sublessee hereunder have been duly authorized by all necessary action on the part of Sublessee; (iii) this Sublease has been duly executed and delivered by Sublessee and constitutes legal, valid and binding obligations of Sublessee, enforceable against Sublessee in accordance with the terms hereof; and (iv) neither the execution and delivery of this Sublease, nor compliance with the provisions hereof, does or will conflict with or result in a breach of any agreement or instrument to which Sublessee is a party or by which Sublessee is bound.

15. No Affirmative Obligations of Sublessor.

Sublessor is not obligated to provide or tender any services whatsoever to the Sublessee under the terms of this Sublease, except for the obligations expressly set forth herein. Sublessor shall not be liable to Sublessee, its successors, assigns or sublessees with respect to any of the affirmative obligations to be performed by any third party including the Condominium Board under the Condominium Documents and Sublessor is released from any such liability. None of the terms of this Sublease shall in any way be affected as a result of any failure of performance of any such affirmative obligations (except as expressly provided in the Ground Lease), and Sublessee shall, in all events, continue to pay all Rent as required under the terms of this Sublease.

16. Miscellaneous.

(a) Each provision of this Sublease shall extend to and shall bind and inure to the benefit of Sublessor and Sublessee and their respective successors and permitted assigns.

(b) Should any term or provision of this Sublease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Sublease shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Sublease. The parties further agree to modify any such unenforceable provision of this Sublease in lieu of severing such unenforceable provision from this Sublease in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Sublease, or by making such other modifications as it deems warranted to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Sublease as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Sublease be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Sublease shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

(c) All notices and other communications in connection with this Sublease and the transactions contemplated hereunder shall be in writing and, any law or statute notwithstanding, shall be effective for any purpose if given or served as follows:

If by Sublessor, by personal delivery or by mailing the same to Sublessee by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, addressed to Sublessee c/o Millennium Partners LLC, 1995 Broadway, New York, New York 10023, Attn: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55th Street, New York, NY 10022, Attn: Eric R. Landau, Esq., or to such other address(es) and attorneys as Sublessee may from time to time designate by notice given to Sublessor as aforesaid; and

If by Sublessee, by personal delivery or by mailing the same to Sublessor by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, addressed to Sublessor at One World Financial Center, New York, New York 10281, Attn: President (with a copy, given in the manner provided above, addressed to the attention of Sublessor's General Counsel, at the address set forth above or at such other address as Sublessor may from time to time designate by notice to Sublessee as aforesaid) and with an additional copy to Torys, 237 Park Avenue, NY, NY 10017 Attn: Miroslav M. Fajt, Esq.; or to such other address(es) and attorneys as Sublessor may from time to time designate by notice given to Sublessee as aforesaid.

Every notice, demand, request, consent, approval, or other communication hereunder shall be deemed to have been given or served when delivered, or if mailed, three (3) Business Days after the date that the same shall have been deposited in the United States mails, postage prepaid, in the manner aforesaid (except that a notice designating the name or address of a person to whom any notice or other communication, or copy thereof, shall be sent shall be deemed to have been given when same is received). Any notice sent by Sublessee to Sublessor may be sent by Sublessee's agent or attorneys.

(d) This Sublease may not be modified, amended, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of any such modification, amendment, changes, discharge or termination is sought.

(e) This Sublease and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements to be performed entirely within such state (without regard to the principles of conflicts of laws).

(f) The parties hereto hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Sublease.

(g) Sublessor hereby grants to Sublessee effective as of the Hotel Unit Sublease Commencement Date, the right to exercise any and all of Sublessor's right, title and interest in, to and under any warranties, guaranties, service or other contracts or agreements,

permits and licenses relating to the Hotel Unit or any equipment, fixtures, furniture or other property therein.

(h) Sublessor and its authorized representatives may enter the Hotel Unit at all reasonable times for the purpose of inspecting the Hotel Unit. Sublessor shall not have any duty to make any such inspection nor shall it incur any liability or obligation for not making any such inspection.

(i) Each right, power and remedy of Sublessor provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Sublessor of any one or more of the rights, powers and remedies provided for in this Sublease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Sublessor of any or all such other rights, powers or remedies.

(j) No failure by Sublessor to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a default under this Sublease, and no acceptance of Rent during the continuance of any such default, shall constitute a waiver of any such default or of any such term. No waiver of any default shall affect or alter this Sublease, which shall continue in full force and effect, or the rights of Sublessor with respect to any other then existing or subsequent default.

(k) No modification, termination or surrender of this Sublease or surrender of the Hotel Unit or any part thereof or of any interest therein by Sublessee shall be valid or effective unless agreed to and accepted in writing by Sublessor, and no act by any representative or agent of Sublessor, other than such a written agreement and acceptance by Sublessor, shall constitute an agreement thereto or acceptance thereof.

(l) This Sublease may be executed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

(m) The statements and facts set forth in the recitals of this Sublease are true and correct, and are incorporated herein by reference and made a part hereof, and each party shall be entitled to rely on them as if they were fully set forth in this Section 16(m).

(n) Except as otherwise expressly provided in this Sublease, there shall be no merger of this Sublease or the leasehold estate created hereby with the fee or leasehold estate in the Hotel Unit, the Premises or any part thereof by reason of the fact that the leasehold estate created by this Sublease, or any interest therein, may be held, directly or indirectly, by or for the account of any Person who shall own such fee estate or Sublessor's leasehold interest in the Hotel Unit, the Premises or any interest in such fee or leasehold estate, and no such merger shall occur until and unless all Persons at the time having an interest in such fee or leasehold estate and all Persons (including all Mortgagees) having an interest in the leasehold estate created by this Sublease and Sublessee shall join in a written instrument effecting such merger and shall duly record the same.

(o) In the event of any inconsistency between the provisions of the Ground Lease, and the provisions of this Sublease, the provisions of the Ground Lease shall govern. In the event of any inconsistency between the provisions of the Hotel Unit Lease and this Sublease, the provisions of this Sublease shall govern.

(p) Sublessor and Sublessee agree and acknowledge that Section 41.06 of the Ground Lease is hereby incorporated herein with the following changes: (a) all references to "Landlord" shall be to "Sublessor" and (b) all references to "Tenant" shall be to "Sublessee."

(q) Sublessor and Sublessee shall execute such documents as may be necessary or reasonably requested by the other party hereto to carry out and consummate the transactions contemplated by this Sublease.

* * *

IN WITNESS, the hands and seals of the parties hereto as of the day and year first above written.

SUBLESSOR:

BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY

By:_____
Name: Timothy S. Carey
Title: President and CEO

SUBLESSEE:

MILLENNIUM BPC DEVELOPMENT LLC

By:_____
Name: Philip E. Aarons
Title: Vice President

BATTERY PARK CITY AUTHORITY,
d/b/a Hugh L. Carey Battery Park City Authority,
as Landlord under the Ground Lease
referred to herein, hereby consents to
the terms and provisions of this Sublease,
and agrees to the terms and provisions of
Section 5 hereof.

BATTERY PARK CITY AUTHORITY,
d/b/a HUGH L. CAREY
BATTERY PARK CITY AUTHORITY

By: _____
Name: Timothy S. Carey
Title: President and CEO

EXHIBIT A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.

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

On the __ day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Timothy S. Carey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of January, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Philip E. Aarons, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

EXHIBIT S

UNIT MORTGAGE SUBORDINATION AND RECOGNITION AGREEMENT
(Residential Mortgagees)

AGREEMENT, dated as of _____, ___, (this "Agreement") between THE BOARD OF MANAGERS OF MILLENNIUM POINT, an unincorporated association having an address c/o Millennium Partners Management LLC, 1995 Broadway, New York, New York 10023 (the "Board"), BATTERY PARK CITY AUTHORITY, d/b/a HUGH L.CAREY Battery Park City Authority, a body corporate and politic constituting a public benefit corporation of the State of New York having an office at One World Financial Center, New York, New York 10281, (together with its successors, assigns and mortgagees, "BPCA"), [UNIT OWNER], having an address at _____ ("Unit Owner") and [UNIT MORTGAGEE], having an address at _____ (together with its successors and assigns, "Residential Mortgagee").

W I T N E S S E T H:

WHEREAS, BPCA, as ground lessor, and Millennium BPC Development LLC, as ground lessee ("Millennium"), have entered into that certain Ground Lease dated as of January 1, 2000, a memorandum of which dated as of January 1, 2000 was recorded on _____, 200_, in Reel _____, Page ____ in the office of the City Register of the City of New York for the County of New York (such lease, as the same may be assigned, amended or restated from time to time, the "Ground Lease") pursuant to which BPCA leased to Millennium that certain land described on Exhibit A hereto (the "Land"), together with the improvements to be constructed thereon;

WHEREAS, the leasehold condominium known as Millennium Point, having the street address 25 Battery Place, New York, New York 10280 (the "Condominium") was created by that certain declaration dated _____ recorded on _____ in the office of the City Register of the City of New York for the County of New York at Reel ____, Page ____ (the "Declaration") subjecting the ground lessee's interest in the Land and the building and other improvements thereon (collectively, the "Property") to the provisions of Article 9-B of the Real Property Law of the State of New York;

WHEREAS, the Condominium is subject and subordinate to the Ground Lease in all respects;

WHEREAS, the Unit Owner is the Owner of Residential Unit ___ (the "Unit") in the Condominium, Block ____, Lot ____;

WHEREAS, Residential Mortgagee is making [has made] a loan to the Unit Owner secured by a [first] [subordinate] mortgage lien (the "Residential Unit Mortgage") against

the Unit Owner's interest in the Unit which is being recorded simultaneously herewith in the sum of $_____;

WHEREAS, each Residential Unit Owner is obligated to pay as part of such Residential Unit Owner's Common Charges "Residential Proportionate Rent" as such term is defined under the Ground Lease and the Declaration; and

WHEREAS, under the terms of the Ground Lease, the Unit Owner may not mortgage the Unit unless the Residential Mortgagee making such loan enters into this Agreement.

NOW, THEREFORE, in consideration of the premises and agreements set forth herein and for Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Subordination. Unit Owner and Residential Mortgagee hereby agree and acknowledge that their respective interests in the Unit and the Residential Unit Mortgage are subject to the terms of this Agreement and subject and subordinate to the Ground Lease.

2. Common Charges. The Board hereby represents that Common Charges for the Unit have been paid through _____. . BPCA hereby represents that, to the best of its knowledge, as of the date of this Agreement there is no default in the payment of Residential Proportionate Rent due with respect to the Unit.

3. Priority of Lien. (a) The parties hereto expressly agree that the interest of the Unit Owner is subject and subordinate to the interest of BPCA, its successors, assigns and mortgagees, under the Ground Lease, and that the interest and rights of Residential Mortgagee in respect of the Residential Unit Mortgage, including the right of Residential Mortgagee to be paid any amount due on account of the Residential Unit Mortgage are subject and subordinate to BPCA's right to be paid Residential Proportionate Rent, together with interest and collection and other costs set forth in the Ground Lease. To the extent that Section 339(z) of the Real Property Law has any application to Residential Proportionate Rent to be paid by the Unit Owner, Residential Mortgagee and the Unit Owner hereby expressly and irrevocably waive for the benefit of BPCA and the Board any rights they may have under or pursuant to said Section 339(z). Residential Mortgagee further agrees and acknowledges that to the extent that the Residential Unit Mortgage is not a first mortgage lien on the Unit, the lien of the Residential Unit Mortgage is subject and subordinate to the Board's right to be paid Common Charges and to BPCA's right to receive all Residential Rent payable under the Ground Lease allocable to the, Unit.

(b) Residential Mortgagee hereby agrees that in the event that it shall at any time receive any funds or proceeds resulting from the foreclosure or enforcement of its lien against the Unit in violation of the priorities of right to payment set forth in Section 3(a) and

Section 10 of this Agreement, Residential Mortgagee shall hold such funds in trust for and on behalf of BPCA and shall turn such funds over to BPCA on demand.

4. Default Notices. In the event of a default by the Unit Owner in the payment of Common Charges (a "Residential Unit Owner Default") the Board will issue a notice of such Residential Unit Owner Default to the Unit Owner within ten (10) business days thereof, with a copy of such notice to be issued simultaneously to Residential Mortgagee and to BPCA. If the Board fails to give such notice, BPCA is permitted, but not obligated, to give such notice to the Unit Owner and the Residential Mortgagee. In the event of a default by the Board with respect to its obligations under the Ground Lease (hereinafter a "Condominium Default") BPCA will give notice thereof to the Board, and the Board shall deliver a copy of such notice to the Residential Mortgagee and to the Unit Owner, provided that if the Condominium Default is a monetary default, BPCA shall also deliver a copy of such default notice to Residential Mortgagee and to the Unit Owner.

5. Residential Unit Owner Default. Residential Mortgagee shall have the right to cure a Residential Unit Owner Default, and BPCA shall accept payments from the Residential Mortgagee on behalf of the Unit Owner within thirty (30) days after receipt of the notice of default from the Board or BPCA. If Residential Mortgagee fails to timely cure the Residential Unit Owner Default and if the Board or the Residential Board fails to institute foreclosure proceedings within ninety (90) days after the issuance of the notice of default described in Paragraph 4 of this Agreement, the Board, the Residential Mortgagee and Unit Owner acknowledge and agree that BPCA shall have the right to institute such proceedings. If, during the pendency of any Legal Proceeding (as hereinafter defined) by BPCA, the Residential Mortgagee remedies the Residential Unit Owner Default, BPCA shall, at the reasonable request of such Residential Mortgagee, either discontinue such proceeding or assign its interests in such proceeding to the Residential Mortgagee, without recourse, to permit the Residential Mortgagee to continue such action or proceeding.

6. Condominium Default. In the event of a Condominium Default, the Residential Mortgagee shall have a period of forty-five (45) days from the issuance of notice by BPCA as provided in Paragraph 4 of this Agreement, or such longer period as may be granted by BPCA in writing, in its sole discretion, to remedy or cause to be remedied such Condominium Default. In the event of a Condominium Default which cannot by its nature reasonably be cured within such forty-five (45) day period, the Board, the Unit Owners or the Residential Mortgagee may take such actions (the "Unit Owner Action") to be commenced within such forty-five (45) day period and shall thereafter cause such Unit Owner Action, to be prosecuted diligently, continuously and in good faith to completion to cause the Condominium Default promptly thereafter to be remedied. Notwithstanding anything to the contrary set forth above, any Condominium Default will be required to be remedied within one hundred eighty (180) days after the date on which BPCA has given notice as provided in Paragraph 4 of this Agreement (or within such longer period to which BPCA may consent in writing). If Unit Owner Action is required to remedy a Condominium Default, the Board, the Unit Owner or the Recognized Unit Mortgagee, as the case may be, shall notify BPCA thereof and shall keep BPCA fully and currently informed of the

status of such Unit Owner Action, the nature and timing of such Unit Owner Action and each step, act or thing done in connection therewith, together with the anticipated completion date of such Unit Owner Action. BPCA acknowledges that Residential Mortgagee is permitted but not required to cure a Condominium Default. No payment by Residential Mortgagee or performance of any terms, conditions, covenants and agreements that are required to be performed by the Board under this Ground Lease by Residential Mortgagee as permitted under this Agreement is intended to limit Residential Mortgagee's rights against the Unit Owner.

7. Notices. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and delivered to the party to whom the notice, demand or request is being made by personal delivery with receipt acknowledged or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, or by FedEx or other similar reputable national overnight courier service, (i) if to BPCA, at One World Financial Center, New York, New York 10281, Attention: President, with a copy to General Counsel, and with an additional copy to Torys, 237 Park Avenue, New York, New York 10017, Attention: Miroslav M. Fajt, Esq.; (b) if to the Board, c/o Millennium Partners, LLC, 1995 Broadway, New York, New York 10023, Attention: Chief Financial Officer, with an additional copy to Battle Fowler LLP, 75 East 55st Street, New York, New York 10022, Attention: Eric R. Landau, Esq.; (c) if to Unit Owner, at _____; and (d) if to Residential Mortgagee, at _____, with an additional copy to _____; or to such other address as any party may from time to time designate by notice given to the other parties in the manner herein provided at least fifteen (15) days prior to such address becoming effective. Every notice is deemed to have been given and served when addressed as provided in the preceding sentence, and when delivered (if delivered by hand), or three business days after the date when deposited with the United States mail, postage prepaid, in the manner aforesaid (if mailed), or one business day after the date when deposited with the courier service (except that a notice designating the name or address of a person to whom any notice, or copy thereof, must be sent is deemed to have been given when same is received.

8. Legal Proceedings. After the giving of notice as described in Paragraph 4 hereof and the expiration of the time for cure or the time for action by the Board as provided in Paragraphs 5 and 6 hereof, BPCA may exercise its rights under the Ground Lease for any Residential Unit Owner Default or any Condominium Default that remains uncured, including, without limitation, the right to prosecute a foreclosure of any statutory lien provided under the Condominium Act, including, without limitation, the lien for Common Charges provided therein (which lien is hereby assigned by the Board to BPCA) or a suit to recover a money judgment (such proceedings are hereinafter referred to as the "Legal Proceedings") against the Unit Owner and the Unit Owner's interest in the Unit. If Residential Mortgagee does not cure a Residential Unit Owner Default as permitted under the Ground Lease and this Agreement, BPCA will have no obligation to Residential Mortgagee with respect to such Residential Unit Owner Default, except that in the event of a transfer or letting of the Unit by BPCA as a result of such Residential Unit Owner Default, whether or not as the result of Legal Proceedings, BPCA shall recognize Residential Mortgagee's rights as lienor as more fully described in Paragraph 10 of this Agreement.

9. Residential Mortgagee Rights to Enforce Lien. BPCA hereby recognizes the rights of Residential Mortgagee as a lienor against the Unit, including Residential Mortgagee's right (a) to foreclose or otherwise enforce its lien against the Unit Owner's interest in the Unit, or to acquire such interest by assignment in lieu of foreclosure, and (b) to transfer its interest therein as provided for in the agreements between Residential Mortgagee and the Unit Owner, subject to BPCA's rights under the Ground Lease and this Agreement, and (c) in any of such events, to have the Unit Owner's interest in the Unit transferred on the books and records of BPCA to Residential Mortgagee's name or the name of its designee.

10. Rights to Proceeds. If BPCA prosecutes Legal Proceedings against the Unit Owner or Residential Mortgagee succeeds to the interest of the Unit Owner in the Unit, BPCA will recognize the rights of the Residential Mortgagee against the proceeds realized by BPCA or by Residential Mortgagee as a result thereof, subject, however, to the priorities as described herein and in Article 43 of the Ground Lease and Section 6.6 of the By-Laws. Residential Mortgagee shall indemnify BPCA against any loss, damage, claim and expense (including reasonable attorneys' fees and disbursements) which BPCA may incur or suffer by reason of any claim by the Unit Owner regarding Residential Mortgagee's acts and BPCA's acts undertaken upon Residential Mortgagee's request relating to this Agreement. The foregoing indemnity shall continue to apply to the acts of Residential Mortgagee or its designee from and after any transfer of the Unit to Residential Mortgagee or its designee. BPCA will give Residential Mortgagee prompt notice of any such claim and Residential Mortgagee may contest any such claim in the name and on behalf of BPCA, but at the expense of Residential Mortgagee. BPCA will cooperate with the Residential Mortgagee in such defense and execute all documents and take all acts reasonably required therefor.

11. BPCA's Rights. The terms and provisions hereof are subject to all of the terms and provisions of the Ground Lease, including, without limitation, the terms and provisions of Article 43 thereof. Except for the express accommodations to the Residential Mortgagee as set forth herein, nothing herein shall be deemed to limit the rights and remedies of BPCA under the Ground Lease in respect of any Condominium Default or Residential Unit Owner Default or any other default thereunder. In the event of any conflict between the terms of the Ground Lease and the terms hereof or of the Condominium Documents, the terms of the Ground Lease shall control.

12. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, representatives, successors and assigns, including, without limitation, any party to which Residential Mortgagee may transfer, sell or assign its interest in the Residential Unit Mortgage and its rights thereunder and hereunder. The failure of the Board or of the Unit Owner to execute and deliver this Agreement shall not affect the validity on or enforceability of this Agreement against any party that has executed and delivered this Agreement.

13. Further Assurances. BPCA, the Board, Unit Owner and Residential Mortgagee shall execute and deliver such other further documents and instruments as may be necessary or

reasonably requested by any party hereto to carry out and consummate the transactions contemplated by this Agreement.

14. Capitalized Terms. Capitalized terms not defined herein are used as defined in the Ground Lease, and to the extent not defined therein, in the Declaration.

15. Governing Law. (a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to agreements to be performed entirely within such state (without regard to principles of conflicts of laws). This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(b) Should any term or provision of this Agreement or the application thereof to any Person or circumstances, to any extent, be invalid or unenforceable, the parties hereby agree to modify such term or provision so that the remainder of this Agreement shall not be affected and that the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as are appropriate to carry out the intent of the parties as embodied herein to the maximum extent permitted by law. The parties expressly agree that this Agreement as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

* * *

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE BOARD OF MANAGERS
OF MILLENNIUM POINT

By: _____
Name:
Title:

BATTERY PARK CITY AUTHORITY d/b/a
HUGH L. CAREY BATTERY PARK CITY
AUTHORITY

By: _____
Name:
Title:

[RESIDENTIAL MORTGAGEE]

By: _____
Name:
Title:

[UNIT OWNER]

By: _____
Name:
Title:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

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

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the __ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:

EXHIBIT A

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

BEGINNING at the corner formed by the intersection of the southerly line at First Place with the easterly line of Battery Place, having a coordinate of north 2235.877, west 10106.132;

1. RUNNING THENCE easterly, along the westerly line of First Place, 229.37 feet to the corner formed by the intersection of the westerly line of Marginal Street, Wharf of Place - United States bulkhead line approved by the Secretary of War July 31, 1941 with the southerly line of First Place;

2. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 102 degrees, 26 minutes, 10 seconds on its westerly side with the preceding course, 123.06 feet to an angle point therein;

3. THENCE southerly, along the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line, forming an angle of 179 degrees, 58 minutes, 30 seconds on its westerly side with the preceding course, 126.46 feet to the corner formed by the intersection of the easterly line of Battery Place with the westerly line of Marginal Street, Wharf or Place - aforesaid bulkhead line;

4. THENCE northerly, along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 338.00 feet and a central angle of 62 degrees, 41 minutes, 39 seconds, whose radial line forms an angle of 19 degrees, 42 minutes, 11 seconds on its northerly side with the preceding course, 369.84 feet to a point of compound curvature;

5. THENCE northerly, still along the easterly line of Battery Place on the arc of a circle curving to the right having a radius of 833.00 feet and a central angle of 1 degree, 45 minutes, 17 seconds, 25.51 feet to the point or place of BEGINNING.

SUBJECT TO AND INCLUDING THE FOLLOWING SIDEWALK EASEMENT:

BEGINNING at a point in the southerly line of First Place distant 214.01 feet easterly from the corner formed by the intersection of the easterly line of Battery Place with the southerly line of First Place;

1. Running thence due east, along the southerly line of First Place, 15.36 feet;

2. Thence south 12 26'10" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 123.06 feet;

3. Thence south 12 24'40" east, along the westerly line of Marginal Street, Wharf or Place and the United States Bulkhead Line, 126.46 feet;

4. Thence northerly, along the easterly line of Battery Place, curving to the right on the arc of a circle having a radius of 338.00 feet and a central angle of 2 43'30", 16.08 feet;

5. Thence north 12 24'40" west, 120.68 feet;

6. Thence north 12 26'10" west, 126.37 feet to the point or place of BEGINNING.