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21 KRISTA FREITAG

22 UNITED STATES DISTRICT COURT  
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SECURITIES AND EXCHANGE  
25 COMMISSION,

26 Plaintiff,

27 v.

28 GINA CHAMPION-CAIN and ANI  
DEVELOPMENT, LLC,

Defendants,

AMERICAN NATIONAL  
INVESTMENTS, INC.,

Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

**JOINT MOTION FOR LIMITED  
RELIEF FROM ORDER, GRANTING  
THE PARTIES JOINT MOTION AND  
STIPULATED REQUEST FOR A  
PRELIMINARY INJUNCTION  
[DOC. 6]**

Date: April 13, 2020  
Time: 11:15 a.m.  
Ct rm: 14A (14th Flr)  
Judge Hon. Larry Alan Burns

**JOINT MOTION**

PLEASE TAKE NOTICE that Krista Freitag, the duly appointed receiver ("Receiver") for ANI Development, LLC, American National Investments, Inc. and their subsidiaries and affiliates, including The Era Boutique Hotel, LLC ("TEBH") (collectively "Receivership Entities"), the Securities and Exchange Commission (the "Commission"); Defendant Gina Champion-Cain, and non-party BankDirect Premium Funding, LLC ("BankDirect") by and through their respective counsel of record, stipulate to limited relief from this Court's September 3, 2019 Order; Granting the Parties Joint Motion and Stipulated Request by Parties for a Preliminary Injunction Order and Order (1) Freezing Assets; (2) Requiring Accountings; (3) Prohibiting Destruction of Documents; and (4) Appointing Permanent Receiver ("Appointment Order"). [Dkt. 6.]

This Joint Motion concerns a loan facility between BankDirect and TEBH and initial loans made by BankDirect to TEBH under the loan facility, the proceeds of which were used exclusively to pay for life insurance policy premiums in support of a \$10 million life insurance policy insuring the life of Defendant Gina Champion-Cain, as well as loan facility fees and costs. As reflected in the below Recitals, the life insurance policy is owned by TEBH. Neither TEBH nor any other Receivership Entity paid any of the premiums owing on the life insurance policy, however, Champion-Cain deposited (and caused to be deposited) approximately \$80,000 into a bank account to secure repayment of the BankDirect loan facility. The loan facility was also secured by the life insurance policy including the right to surrender the policy and to the surrender value of the policy, and the Champion-Cain Collateral Account and funds in that account.

The loan facility is presently in default and BankDirect wishes to exercise its rights and remedies with respect to collateral via foreclosure on the bank account and surrender of the life insurance policy. The Receiver has determined that there is no value to Receivership Entities in maintaining the life insurance policy and there

1 is no present value to its interest in the collateral in excess of the amounts due to  
 2 BankDirect under the loan facility (absent the policy maturing). Accordingly, the  
 3 Receiver has agreed to allow BankDirect to exercise its rights and remedies as set  
 4 forth in this Joint Motion.

### 5 **RECITALS**

6 1. Section XIII and XIV of the Appointment Order expressly restrains and  
 7 enjoins all persons receiving notice of the Appointment Order from using self-help  
 8 or otherwise taking any action to interfere with the Receiver's efforts to take control,  
 9 possession or management of any property of the Receivership Entities, including  
 10 by way of executing on or taking possession of any such property.

11 2. In addition, pursuant to Section V of the Appointment Order, the Court  
 12 ordered an immediate freeze over, *inter alia*, all accounts at any bank, all certificates  
 13 of deposit, and all funds held in the name of, for the benefit of, or over which  
 14 account authority is held by Defendant Champion-Cain.

15 3. On or about August 20, 2018, BankDirect and TEBH entered into a  
 16 Loan Agreement (attached as Exhibit A) relating to the life insurance premium  
 17 finance loan transaction entered into by BankDirect as Lender and TEBH as  
 18 Borrower to finance the payment of insurance premiums by TEBH to Accordia Life  
 19 and Annuity Company (the "Insurer") on life insurance policy number UL00023042  
 20 issued by the Insurer (the "Life Insurance Policy") and owned by TEBH which  
 21 insures the life of Champion-Cain. *See Exhibit A.*

22 4. TEBH issued a Promissory Note (attached as Exhibit B), payable to the  
 23 order of BankDirect in the principal amount of \$3,250,000; and TEBH executed and  
 24 delivered to BankDirect a Notice of Borrowing and Disbursement Instructions  
 25 (attached as Exhibit C), relating to the initial loan advances made by BankDirect to  
 26 TEBH to the Borrower under the Loan Agreement and the Promissory Note in the  
 27 aggregate principal amount of \$1,081,035.12.

28

1           5.       TEBH and BankDirect entered into the Collateral Assignment of Life  
2 Insurance, dated as of August 20, 2018 (the "Collateral Assignment") in connection  
3 with the Loan Agreement and the Life Insurance Policy (attached as Exhibit D).  
4 Pursuant to the Collateral Assignment, TE BH assigned, transferred and pledged to  
5 BankDirect and granted a security interest to BankDirect in all of TE BH's claims,  
6 options, privileges, rights, title and interest in, to and under the Life Insurance  
7 Policy, including the exclusive right to surrender the Life Insurance Policy and to  
8 receive the surrender value and all proceeds thereof (collectively, "Life Insurance  
9 Policy Collateral") to secure the payment and performance of all of the loans made  
10 by BankDirect to TE BH under the Loan Agreement and the Promissory Note  
11 (collectively, the "Loans") and all accrued and unpaid interest thereon, and all of the  
12 other Obligations (as defined in the Loan Agreement).

13           6.       By letter dated October 2, 2018, the Insurer acknowledged and  
14 confirmed to BankDirect that the Collateral Assignment had been recorded by the  
15 Insurer and that BankDirect is the sole interest on the Life Insurance Policy  
16 (attached as Exhibit E).

17           7.       In connection with the Loan Agreement, Defendant Champion-Cain  
18 and BankDirect entered into (a) the Collateral Agreement (attached as Exhibit F),  
19 dated as of August 20, 2018 (the "Collateral Agreement"), pursuant to which  
20 Champion-Cain agreed, among other things, to pledge additional collateral to  
21 BankDirect in an amount necessary that, when taken together with the Life  
22 Insurance Policy Collateral, would enable TE BH to satisfy the Collateral  
23 Requirement (as defined in the Loan Agreement) and Champion-Cain pledged to  
24 BankDirect and granted a security interest to BankDirect in all of her rights, title and  
25 interests in and to deposit account number 6116002393 established by Champion-  
26 Cain with Texas Capital Bank, N.A. ("TCB"), an affiliate of BankDirect (the  
27 "Collateral Account") and all funds in, and proceeds of, the Collateral Account  
28 (collectively, the "Collateral Account Property") to secure the payment and

1 performance of all of the Loans and all accrued and unpaid interest thereon and all  
2 of the other Obligations (as defined in the Loan Agreement); and (b) the Collateral  
3 Account Control Agreement (attached as Exhibit G), dated September 5, 2018 (the  
4 "Collateral Account Control Agreement"), among Champion-Cain, BankDirect, and  
5 TCB, relating to the Collateral Account and establishing BankDirect's exclusive  
6 control over and additional rights with respect to the Collateral Account.

7 8. BankDirect notified both TEBH and Champion-Cain in separate letters  
8 dated September 4, 2019 that TEBH was not in compliance with Loan Agreement  
9 Section 5.9 providing for the Collateral Requirement (as defined in the Loan  
10 Agreement) and requesting that additional collateral be pledged to BankDirect by  
11 September 12, 2019 to restore compliance with the Collateral Requirement (each, a  
12 "Collateral Default Notice").

13 9. BankDirect asserts that the aggregate outstanding principal amount of  
14 the Loans is on the date hereof an aggregate amount equal to \$1,081,035.12 (the  
15 "Borrower Loan Principal Amount") and that accrued and unpaid interest on the  
16 Loans is as of January 15, 2020 an aggregate amount equal to \$66,803.54 (the  
17 "Borrower Loan Interest Amount") and that BankDirect has incurred attorneys' fees  
18 in connection with the loan facility and the events of default. BankDirect asserts  
19 that these amounts are collectively greater than the sum of the cash surrender value  
20 of the Life Insurance Policy and the value of the Collateral Account Property.  
21 Neither TEBH nor Champion-Cain have made any payments of principal of or  
22 interest on the Loans or any of the other above referenced Obligations (as defined in  
23 the Loan Agreement) to BankDirect.

24 10. As a result of TEBH's failure to make an interest payment on the Loans  
25 under the Loan Agreement and the Promissory Note on the date when due  
26 thereunder, TEBH's and Champion-Cain's respective failures to comply with the  
27 Collateral Default Notices, and other events and circumstances, BankDirect asserts  
28 that multiple Events of Default (as defined in the Loan Agreement) have occurred

1 and are continuing on the date hereof. BankDirect has notified the Receiver/TEBH  
 2 and Champion-Cain in separate letters dated September 19 and October 7, 2019,  
 3 respectively, of the occurrence and continuance of these Events of Default.

4 11. BankDirect has accelerated and demanded immediate payment in full  
 5 of the outstanding principal balance of the Loans, all accrued and unpaid interest  
 6 thereon and all of the other Obligations due and owing under the Loan Agreement,  
 7 the Promissory Note and the other Loan Documents (as defined in the Loan  
 8 Agreement) (collectively, the "Loan Facility Obligations"). Neither TEBH nor  
 9 Champion-Cain have paid any of these accelerated amounts.

10 12. BankDirect asserts it has valid, perfected, first priority assignments,  
 11 transfers, pledges, security interests and other liens (as applicable) (collectively,  
 12 "Liens") in, to, under and on the Life Insurance Policy, the other Life Insurance  
 13 Policy Collateral, the Collateral Account and the Collateral Account Property  
 14 (collectively, the "Loan Facility Collateral").

15 13. The Receiver, in her reasonable judgment exercised in accordance with  
 16 the duties of her appointment, believes: (1) BankDirect has valid claims under the  
 17 Loan Agreement, the Promissory Note and the other Loan Documents;  
 18 (2) BankDirect has certain Liens in, to, under and on the Loan Facility Collateral;  
 19 and (3) stipulating to relief is appropriate under these circumstances so long as such  
 20 relief is limited to allowing (a) BankDirect to exercise its rights and remedies on and  
 21 with respect to and realize upon the Life Insurance Policy Collateral and the  
 22 Collateral Account and transfer and apply the proceeds from the surrender of the  
 23 Life Insurance Policy and all funds contained in the Collateral Account to the  
 24 payment and satisfaction of the outstanding principal balance of the Loans and all  
 25 accrued and unpaid interest thereon, and all of the other Obligations (as defined in  
 26 the Loan Agreement) due and owing under the Loan Agreement, the Promissory  
 27 Note and the other Loan Documents and (b) the Insurer and TCB to take such  
 28

1 actions with respect to TEBH, Champion-Cain, BankDirect and the Loan Facility  
2 Collateral which are necessary to facilitate or consummate the foregoing.

3 14. If the Life Insurance Policy matures as a result of the death of  
4 Champion-Cain, then BankDirect shall be first paid the death benefit from and any  
5 other proceeds of the Life Insurance Policy in an aggregate amount equal to all  
6 amounts owing to BankDirect under the Loan Agreement, Promissory Note and the  
7 other Loan Documents, and then the balance of the death benefit from and other  
8 proceeds of the Life Insurance Policy shall be paid to the Receiver. Upon  
9 Champion-Cain's death, BankDirect and the Receiver will fully cooperate in good  
10 faith to recover the amounts due under the Life Insurance Policy and to distribute  
11 the death benefit and any other proceeds in accordance with this paragraph 14.

12 15. Under the circumstances unique to the Receivership, the Receiver  
13 believes, in her reasonable judgment exercised in accordance with the duties of her  
14 appointment, the limited relief from the Appointment Order described herein is  
15 appropriate.

#### 16 **STIPULATION**

17 THEREFORE, the Commission, the Receiver, Champion-Cain, and  
18 BankDirect hereby STIPULATE AND AGREE as follows:

19 16. The Recitals set forth above are true and correct and are incorporated  
20 herein by reference as if set forth in full herein.

21 17. TEBH, Champion-Cain and BankDirect (and the Insurer and TCB, to  
22 the extent applicable) should be granted limited relief from the prohibitions set forth  
23 in the Appointment Order for the purposes of permitting BankDirect to exercise its  
24 rights and remedies on and with respect to and realize upon the Loan Facility  
25 Collateral and apply the Loan Facility Collateral to pay and satisfy the Loan Facility  
26 Obligations, subject to compliance with paragraph 14 above, and that the Insurer  
27 and TCB be allowed to take such actions with respect to TEBH, Champion-Cain,  
28



1 BankDirect and the Loan Facility Collateral which are necessary to facilitate or  
2 consummate the foregoing.

3 18. Such relief from the prohibitions set forth in the Appointment Order  
4 shall be limited to TEBH, Champion-Cain and BankDirect (and the Insurer and  
5 TCB, to the extent applicable) and shall not extend to any other creditor of the  
6 Receivership Entities.

7 19. BankDirect retains all other rights and remedies it currently has,  
8 including without limitation the right to petition this Court for further relief from  
9 this Court. The Receiver and Champion-Cain agree to execute and deliver to such  
10 documents as BankDirect may reasonably request in order to exercise its rights and  
11 remedies on and with respect to and realize upon the Loan Facility Collateral and  
12 apply the Loan Facility Collateral to pay and satisfy the Loan Facility Obligations.

13 **REQUEST FOR RELIEF**

14 For the reasons stated above, the Commission, the Receiver, Defendant  
15 Champion-Cain, and BankDirect request that the Court issue an order granting the  
16 limited relief from the Appointment Order as set forth herein.

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1 IT IS SO STIPULATED.

2

3 Dated: February 20, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
EDWARD G. FATES  
NORMAN M. ASPIS

4

5

6

7

By: /s/ David R. Zaro

DAVID R. ZARO  
Attorneys for Receiver  
KRISTA FREITAG

8

9

10 Dated: February 20, 2020

11

By: /s/ Kathryn C. Wanner

KATHRYN C. WANNER  
ALEC JOHNSON  
GARY Y. LEUNG  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION

12

13

14

15

16 Dated: February 20, 2020

SCHEPER KIM & HARRIS LLP  
DAVID SCHEPER  
ANGELA MACHALA

17

18

By: /s/ Angela Machala

ANGELA MACHALA  
Attorneys for Defendant GINA  
CHAMPION-CAIN

19

20

21

22 Dated: February 20, 2020

BRACEWELL LLP

23

24

By: /s/ Matthew G. Nielsen

MATTHEW G. NIELSEN (motion or  
admission *pro hac vice* pending)  
Attorneys for BANKDIRECT  
PREMIUM FUNDING, LLC

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\\

**SIGNATURE CERTIFICATION**

In accordance with Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, the filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: February 20, 2020

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
EDWARD G. FATES

By: s/ David R. Zaro

DAVID R. ZARO  
Attorneys for Receiver  
KRISTA FREITAG

*Securities and Exchange Commission v. Gina Champion-Cain  
and ANI Development, LLC*  
USDC, Southern District of California, Case No. 3:19-cv-01628-LAB-AHG

**INDEX OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Page</b>
A	BankDirect and TEBH Loan Agreement	11
B	TEBH Promissory Note, payable to the order of BankDirect, in the principal amount of \$3,250,000	50
C	Notice of Borrowing and Disbursement Instructions executed by TEBH	53
D	Collateral Assignment of Life Insurance, dated August 20, 2018	57
E	October 2, 2018 letter by Insurer acknowledging and confirming to BankDirect recordation of Collateral Assignment	65
F	Collateral Agreement dated August 20, 2018	74
G	Collateral Account Control Agreement dated September 5, 2018	106

**LOAN AGREEMENT**

**between**

**BANKDIRECT PREMIUM FUNDING, LLC  
as Lender**

**and**

**The Era Boutique Hotel, LLC,  
as Borrower**

**Dated as of August 20, 2018**

#053117

## TABLE OF CONTENTS

	Page
ARTICLE 1     DEFINITIONS AND INTERPRETATION .....	1
Section 1.1     Defined Terms .....	2
Section 1.2     Interpretation.....	9
ARTICLE 2     LOANS .....	9
Section 2.1     Commitment; Advances.....	10
Section 2.2     Borrowing Procedures .....	10
Section 2.3     Loan Origination Fee .....	11
Section 2.4     Evidence of Indebtedness .....	11
Section 2.5     Interest; Repayment of Loan.....	11
Section 2.6     Default Interest.....	12
Section 2.7     Prepayments .....	12
Section 2.8     General Provisions Regarding Payments.....	12
Section 2.9     Funding Losses .....	12
Section 2.10     Increased Costs .....	13
Section 2.11     Taxes.....	14
Section 2.12     Change in Circumstances.....	14
Section 2.13     Release of Collateral .....	15
ARTICLE 3     CONDITIONS PRECEDENT .....	15
Section 3.1     Closing Date Conditions .....	15
Section 3.2     Funding Date Conditions .....	15
ARTICLE 4     REPRESENTATIONS AND WARRANTIES.....	17
Section 4.1     Organization, Etc. ....	17
Section 4.2     Due Authorization.....	17
Section 4.3     Execution and Delivery; Enforceability.....	17
Section 4.4     Life Insurance Collateral.....	18
Section 4.5     No Conflict.....	18
Section 4.6     Authorizations.....	18
Section 4.7     No Adverse Proceedings.....	18
Section 4.8     Compliance With Applicable Laws .....	19
Section 4.9     Payment of Taxes.....	19

#053117

**TABLE OF CONTENTS**  
(continued)

		Page
Section 4.10	No Defaults .....	19
Section 4.11	Borrower Activities.....	19
Section 4.12	Certain Fees .....	19
Section 4.13	Disclosure .....	19
Section 4.14	Insured Certificate.....	19
Section 4.15	No Inducements .....	19
Section 4.16	Other Loan Documents .....	20
Section 4.17	Borrower Certificate .....	20
ARTICLE 5	COVENANTS .....	20
Section 5.1	Payment and Performance of Obligations .....	20
Section 5.2	Life Insurance Policy .....	20
Section 5.3	Information .....	21
Section 5.4	Existence .....	21
Section 5.5	Payment of Taxes and Claims.....	21
Section 5.6	Books and Records .....	21
Section 5.7	Compliance with Applicable Laws .....	21
Section 5.8	Borrower Activities.....	22
Section 5.9	Collateral Value .....	22
ARTICLE 6	EVENTS OF DEFAULT AND REMEDIES .....	22
Section 6.1	Events Default.....	22
Section 6.2	Remedies.....	24
Section 6.3	Application of Proceeds.....	25
Section 6.4	Lender May Perform.....	25
Section 6.5	Standard of Care .....	25
Section 6.6	No Duty on Part of Lender.....	26
ARTICLE 7	MISCELLANEOUS .....	26
Section 7.1	Notices .....	26
Section 7.2	Costs and Expenses.....	26
Section 7.3	Indemnification .....	26
Section 7.4	Power of Attorney.....	27

**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
Section 7.5	Set-Off.....	27
Section 7.6	Entire Agreement.....	28
Section 7.7	Amendments .....	28
Section 7.8	Binding Effect; Assignments .....	28
Section 7.9	Independence of Covenants .....	28
Section 7.10	Survival .....	28
Section 7.11	No Waiver; Remedies Cumulative .....	28
Section 7.12	Payments Set Aside.....	29
Section 7.13	Limitation of Liability.....	29
Section 7.14	Severability .....	29
Section 7.15	Governing Law .....	29
Section 7.16	WAIVER OF JURY TRIAL.....	29
Section 7.17	Counterparts.....	30
Section 7.18	Status of Manager .....	30
Section 7.19	Additional Acknowledgments and Agreements. ....	30



## TABLE OF CONTENTS

Exhibit A	Promissory Note
Exhibit B	Collateral Assignment of Life Insurance
Exhibit C	Collateral Agreement
Exhibit E	Certificate of Insured
Exhibit F	Certificate of Manager
Exhibit G	Notice of Borrowing and Disbursement Instructions

## LOAN AGREEMENT

**LOAN AGREEMENT**, dated as of August 20, 2018, between BANKDIRECT PREMIUM FUNDING, LLC, a South Dakota limited liability company (the "Lender"), and The Era Boutique Hotel, LLC a limited liability company organized under the laws of the State of California (the "Borrower").

## RECITALS

**WHEREAS**, Borrower is a limited liability company organized under the laws of the State of California;

**WHEREAS**, Borrower is the sole legal and beneficial owner and duly designated beneficiary of the Life Insurance Policy (as defined below) insuring the life of Gina Champion-Cain, an individual resident in the State of California (the "Insured"), as evidenced by recordation of Borrower as the sole owner and duly designated beneficiary of the Life Insurance Policy on the books and records of the Insurer;

**WHEREAS**, Borrower desires to obtain loans from Lender to pay for insurance premiums on the Life Insurance Policy and, at the election of Borrower, Loan Origination Fees (as defined below);

**WHEREAS**, Lender is willing to make such loans to Borrower subject to the terms and conditions set forth in this Agreement;

**WHEREAS**, Borrower will collaterally assign the Life Insurance Policy to Lender pursuant to a Collateral Assignment of Life Insurance (as defined below) to secure the payment and performance of the loans and the other obligations under this Agreement and the other Loan Documents (as defined below); and

**WHEREAS**, the Insured desires that Lender make the loans to Borrower as described above, and to induce Lender to make such loans the Insured (or another Collateral Provider) will enter into the Collateral Agreement (as needed) with Lender, pursuant to which the Insured (or another Collateral Provider) will be required to pledge and deliver Insured Collateral to Lender from time to time to secure and provide credit support for the payment and performance of the loans and the other obligations under this Agreement and the other Loan Documents.

## AGREEMENT

**NOW THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

## ARTICLE 1

## DEFINITIONS AND INTERPRETATION

**Section 1.1 Defined Terms.** In addition to terms defined elsewhere herein, the following terms as used in this Agreement have the meanings specified below (terms defined in the singular to have the same meaning when used in the plural, and vice versa, unless otherwise expressly indicated):

**“Advance”** means an advance of proceeds of the Loan.

**“Additional Advance”** means an additional advance of proceeds of the Loan incremental to the initial Advance, which Borrower may from time to time request from Lender and which Lender may make at its sole discretion.

**“Additional Loan Funding Date”** means any date on which Lender makes and Additional Advance, in each case subject to the satisfaction of the conditions precedent set forth in Section 3.2.

**“Agreement”** means this Loan Agreement, together with the Exhibits hereto, as amended, supplemented or otherwise modified from time to time.

**“Applicable Interest Rate”** means a rate per annum equal to the LIBOR Rate then in effect plus 175 basis points, provided that at no time while this Agreement remains in effect will the Applicable Interest Rate be less than 4.58%.

**“Applicable Law”** means any applicable law, including (without limitation) any applicable: (a) national, federal, state, territorial, county, municipal or other governmental law, statute, ordinance, rule, regulation or requirement; (b) judicial, administrative or other governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive; (c) common law or other legal or quasi legal precedent; and (d) with respect to provisions in the Loan Documents governing or relating to interest, finance charges and fees, the U.S. federal laws and regulations, including, without limitation, 12 U.S.C. Sections 85 and 86 and any other U.S. federal law or regulation now or at any time hereafter prescribing the maximum rates of interest on loans and extensions of credit; in each case (i) whether domestic or foreign, (ii) whether at law, in equity, or otherwise, and (iii) as the same may be adopted, supplemented, modified, amended, restated or replaced from time to time or any corresponding or succeeding provisions thereof.

**“Borrower”** means The Era Boutique Hotel, LLC, a limited liability company formed under the laws of the State of California. References to “Borrower” in this Agreement and in the other Loan Documents shall also mean and include the Member, acting solely in its, his or her capacity as such pursuant to the Operating Agreement.

**“Borrowing Request”** means a Notice of Borrowing and Disbursement Instructions in the form attached hereto as Exhibit G, completed and executed by Borrower.

**“Business Day”** means any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close or on which the New York Stock Exchange or Lender is closed.

**"Certificate of Insured"** means the Certificate of Insured duly executed by the Insured in favor of Lender, in the form attached hereto as Exhibit E.

**"Certificate of Member"** means the Certificate of Member duly executed by the Member in favor of Lender, in the form attached hereto as Exhibit F.

**"Closing Date"** has the meaning given to such term in Section 3.1.

**"Collateral"** means the collective reference to all collateral and other credit support from time to time securing or supporting the payment and performance of the Obligations, including (a) the Life Insurance Policy, (b) any Eligible Letter of Credit or cash payment delivered to and in the possession of Lender, and/or (c) any Eligible Assets held in the Collateral Account.

**"Collateral Account"** has the meaning specified in the Collateral Agreement.

**"Collateral Account Control Agreement"** means a Collateral Account Control Agreement, substantially in the form attached hereto as Exhibit D or otherwise in form and substance satisfactory to Lender, duly completed and executed by the Collateral Intermediary, Lender and the Insured or other Collateral Provider.

**"Collateral Agreement"** means a Collateral Agreement in the form attached hereto as Exhibit C, duly completed, executed and delivered by the Insured or other Collateral Provider.

**"Collateral Assignment of Life Insurance"** means a Collateral Assignment of Life Insurance in the form attached hereto as Exhibit B, duly completed, executed and delivered by Borrower.

**"Collateral Intermediary"** has the meaning specified in the Collateral Agreement.

**"Collateral Notice"** has the meaning specified in the Collateral Agreement.

**"Collateral Provider"** means (a) the Insured or (b) any other Person (if any) (other than Borrower) acceptable to the Lender in its sole discretion, who or which pledges or provides all or any part of the Collateral to the Lender under the Collateral Agreement.

**"Collateral Requirement"** means, as of any date of determination, the requirement that Lender has a valid, enforceable, first priority perfected security interest in and to Eligible Assets as Collateral, and/or Lender is the beneficiary and in possession of one or more Eligible Letters of Credit as Collateral, in each and any case, which is free and clear of all Liens, and has an aggregate value determined by Lender on such date to be equal to or greater than the Required Collateral Value applicable for such date, as determined by Lender. For purposes of determining compliance with the Collateral Requirement, the value of the Life Insurance Policy on any date of determination shall be the lowest Guaranteed Cash Surrender Value during a 13-month period commencing on the nearest Funding Date (or the nearest anticipated Funding Date as determined by Lender), and the value of any Eligible Collateral on any date of determination shall be determined by Lender in accordance with the Collateral Agreement.

**"Commitment"** has the meaning specified in Section 2.1(a).

**"Commitment Amount"** means \$3,250,000.

**"Commitment Termination Date"** means the earliest to occur of (i) the Maturity Date, (ii) the date on which the outstanding principal balance of the Loan (including all unpaid interest that has accrued and been capitalized to the outstanding principal balance of the Loan) equals the Commitment, and (iii) the date of the termination of the Commitment pursuant to Article 6 or Section 2.1(b).

**"Credit Rating"** means, with respect to the Insurer on any date of determination, the respective rating then assigned to its unsecured senior long-term debt (not supported by third party credit enhancements) by S&P or Moody's on such date.

**"Default"** means any condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

**"Dollar"** and the sign "\$" mean the lawful money of the United States of America.

**"Eligible Assets"** means (a) any cash and instruments owned by the Pledgor and held and maintained in the Collateral Account, (b) any Eligible Securities owned by the Pledgor and held and maintained in the Collateral Account, (c) any cash drawn by the Lender as beneficiary under any Letter of Credit constituting Collateral hereunder from time to time, and (d) any cash paid to and held by the Lender to satisfy the Collateral Requirement.

**"Eligible Collateral"** has the meaning specified in the Collateral Agreement.

**"Eligible Letter of Credit"** has the meaning specified in the Collateral Agreement.

**"Eligible Security"** has the meaning specified in the Collateral Agreement.

**"Event of Default"** has the meaning given to such term in Section 6.1.

**"Existing Loan"** means any indebtedness of Borrower to any other Person outstanding on the Closing Date, the proceeds of which have been used in whole or in part to make Premium Payments.

**"Funding Date"** means the Initial Loan Funding Date or any Additional Loan Funding Date.

**"GAAP"** means generally accepted accounting principles from time to time in effect in the United States of America.

**"Governmental Authority"** means any country or nation, any political subdivision, state or municipality of any country or nation and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to the government of any country or nation or political subdivision thereof.

**"Guaranteed Cash Surrender Value"** means, as of any date of determination, the cash value of the Life Insurance Policy that the Insurer guarantees would be paid by the Insurer upon surrender of the Life Insurance Policy, based on the current cost of insurance and the guaranteed policy interest rate, or another interest rate as determined by Lender.

**"Illegality"** has the meaning given to such term in Section 2.12.

**"Immediately Available Funds"** means Dollars in immediately available funds.

**"Indemnified Liabilities"** has the meaning given to such term in Section 7.3(a).

**"Indemnitee"** has the meaning given to such term in Section 7.3(a).

**"Initial Loan Funding Date"** means the date on which the initial Advance is made pursuant to Section 2.1, subject to the satisfaction of the conditions precedent set forth in Sections 3.1 and 3.2.

**"Insured"** means Gina Champion-Cain, named as the insured(s) under one or more Life Insurance Policy.

**"Insurer"** means, both individually and collectively, the issuer(s) of the life insurance policy(ies) listed on Schedule A hereto.

**"Insurer Assignment Acknowledgment"** means a Collateral Assignment of Life Insurance made by Borrower in favor of Lender which is acknowledged and signed by the Insurer, in form and substance satisfactory to Lender.

**"Interest Payment Date"** means any Funding Date (other than the Initial Loan Funding Date) and the Maturity Date.

**"Interest Period"** means an interest period of one (1) year commencing on the applicable Funding Date or the day following the expiration of the immediately preceding Interest Period, as applicable; provided that (i) each such Interest Period shall end on the day immediately preceding each Policy Anniversary Date, (ii) if the last day of any Interest Period is not a Business Day, such Interest Period shall expire on the next succeeding Business Day, and (iii) notwithstanding the foregoing, no Interest Period shall extend beyond the Maturity Date. Notwithstanding the foregoing, if the Policy Inception Date occurred prior to the Initial Loan Funding Date, the first Interest Period shall commence on the Initial Loan Funding Date and end on the day immediately preceding the next Policy Anniversary Date; provided that if such day is not a Business Day, such Interest Period shall expire on the next succeeding Business Day.

**"Lender"** has the meaning specified in the preamble hereto.

**"Lender Expenses"** means any and all (a) reasonable fees, costs, and expenses (including, without limitation, reasonable attorneys' fees) paid or incurred by Lender from time to time under, from, as a result of or in connection with (i) the negotiation of this Agreement or any other Loan Document, (ii) the preparation, negotiation, execution and delivery of any amendment, modification or supplement to, or any restructuring or waiver of, this Agreement or



any other Loan Document or any term or provision thereof, (iii) the approval, perfection, priority, administration, issuance, delivery, renewal or presentation by Lender of any Collateral, and (b) all fees, costs and expenses (including, without limitation, attorneys' fees) which Lender may from time to time pay or incur under, from, as a result of or in connection with the collection or enforcement of the Obligations or any other rights or remedies under or with respect to this Agreement or any other Loan Document or any Collateral.

**"Lender's Wire Instructions"** means the instructions to wire funds set forth in any Borrowing Request.

**"Letter of Credit"** has the meaning specified in the Collateral Agreement.

**"Letter of Credit Issuer"** has the meaning specified in the Collateral Agreement.

**"LIBOR Rate"** means, with respect to each day during each Interest Period, the rate (expressed as a percentage per annum and adjusted as described in this definition of LIBOR Rate) for deposits in United States Dollars specified as the 12-month LIBOR which appears on Reuters Screen LIBOR01 (or the successor thereto) at approximately 11:00 A.M., New York, New York time, on the date of the commencement of such Interest Period, rounded to the nearest one-hundredth of one percent (.01%). In the event that such rate does not appear on Reuters Screen LIBOR01 for such date (or otherwise on such successor screen) or such screen or service shall cease to be available, the "LIBOR Rate" shall be determined by Lender to be the offered rate on such other screen or service that displays an average British Bankers Association Interest Settlement Rate for deposits in United States Dollars (for delivery on the first day of such Interest Period) for a term equivalent to such Interest Period as of 11:00 a.m. on the date of the commencement of such Interest Period. If the rates referenced in the two preceding sentences are not available, the LIBOR Rate will be determined by an alternate method selected by Lender. The LIBOR Rate shall be adjusted from time to time in Lender's sole discretion for then-applicable reserve requirements, deposit insurance assessment rates, marginal emergency, supplemental, special and other reserve percentages, and other regulatory costs.

**"Lien"** means any mortgage, deed of trust, pledge, hypothecation, assignment, encumbrance, lien (statutory or other), preference, participation interest, priority or other security agreement or preferential arrangement of any kind or nature whatsoever resulting in an encumbrance against real or personal property of a Person, including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the UCC or comparable law of any jurisdiction to evidence any of the foregoing.

**"Life Insurance Policy"** means, individually and collectively, each life insurance policy listed on Schedule A hereto, and any and all applications, conditional receipts, riders, endorsements, supplements, amendments and all other documents and instruments that modify or otherwise affect the terms and conditions of such policies issued in connection therewith.

**"LLC"** means The Era Boutique Hotel, LLC, a limited liability company organized according to the laws of the state of California.



**"LLC Articles of Organization"** means the LLC Articles of Organization (or Certificate of Formation), dated as of June 4, 2015.

**"Loan"** respectively means the loans made by Lender to Borrower hereunder from time to time, including (a) all Advances to pay Premium Payments, (b) all Advances to pay Loan Origination Fees, if any, (c) all interest due and payable on the Advances on any Interest Payment Date that has been capitalized and added to the outstanding principal amount of the Loan under this Agreement, if any, (d) any other amounts due and payable under this Agreement that have at Lender's sole election been capitalized and added to the outstanding principal amount of the Loan under this Agreement, if any, and (e) any other amounts, if any, advanced by Lender from time to time to or on behalf of Borrower pursuant to this Agreement or any other Loan Document.

**"Loan Documents"** means this Agreement, the Promissory Note, the Collateral Assignment of Life Insurance, the Collateral Agreement (if applicable), the Collateral Account Control Agreement (or a similar document acceptable to the Lender) (if applicable), each Eligible Letter of Credit, the Certificate of Insured, the Certificate of Member, each Borrowing Request and all other agreements, instruments, documents and certificates referenced in this Agreement or any other Loan Document further evidencing, securing or otherwise relating to the Loan or any of the foregoing.

**"Loan Origination Fee"** means a non-refundable loan origination fee in the amount of \$26,380.20.

**"Member"** means The Gina Champion-Cain Revocable Trust UTD June 26, 2012, a Person identified as a Member of LLC in the Operating Agreement (or subsequently appointed as a Member of LLC)

**"Maturity Date"** means the earlier to occur of (i) the fifth (5th) anniversary of the Initial Loan Funding Date, (ii) the date on which the Loan becomes due and payable hereunder, whether by acceleration or otherwise and (iii) the date of the death of the Insured.

**"Moody's"** means Moody's Investors Service, Inc. or any successor thereto.

**"Minimum Insurer Credit Rating"** means a Credit Rating of "A-" by A.M. Best Co. or any successor thereto, "A-" by S&P or any successor thereto or "A3" by Moody's or any successor thereto.

**"Obligations"** means the Loan and any and all other indebtedness, liabilities and obligations of every nature and description of Borrower, the Insured and any other Collateral Provider to Lender under this Agreement or any other Loan Document, whether for principal, interest (including interest that, but for the filing of a petition in bankruptcy with respect to Borrower, the Insured or any other Collateral Provider, would have accrued on any of the Obligations, regardless of whether a claim is allowed against Borrower, the Insured or any other Collateral Provider for such interest in the related bankruptcy proceeding), fees, costs, expenses, indemnification or otherwise, whether now existing or hereafter arising, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, due or to become due, and whether or not from time to time decreased or extinguished and later

#053117

increased, created or incurred, and whether on account of principal, interest, indemnities, fees, costs, expenses or otherwise.

**"Operating Agreement"** means the LLC Operating Agreement, designating, among other things, The Gina Champion-Cain Revocable Trust UTD June 26, 2012 as Member of LLC.

**"Person"** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, regardless of whether legal entities, and Governmental Authorities.

**"Pledgor"** has the meaning specified in the Collateral Agreement.

**"Policy Anniversary Date"** means each anniversary of the Policy Inception Date.

**"Policy Inception Date"** means the date on which the first life insurance policy listed on Schedule A hereto first becomes effective as referenced or described in that life insurance policy or, if unspecified or not so described, another representative date as reasonably determined by Lender.

**"Premium Payment"** means any payment made to or for the account of the Insurer in respect of any premium due and payable on the Life Insurance Policy.

**"Proceeds"** means (i) all "proceeds" as defined in Article 9 of the UCC as in effect from time to time and (ii) all property which is receivable or received when any Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary, or any Letter of Credit is drawn upon.

**"Promissory Note"** means a Promissory Note in the form attached hereto as Exhibit A, duly completed, executed and delivered by Borrower, with such changes, if any, as shall be agreed to by Lender in its discretion.

**"Required Collateral Value"** means, on any date of determination, the sum of (i) the outstanding principal balance of the Loan on such date (including any Advance to be made on such date) plus (ii) all unpaid interest that has accrued on the Loan and not yet been capitalized to the outstanding principal of the Loan through and including such date plus (iii) all interest that is expected to accrue on the Loan at the Applicable Interest Rate from such date of determination to the day which is thirty (30) days after the end of the Interest Period following such date, as determined by Lender.

**"S&P"** means Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

**"Tax"** means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided that "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in

which that Person is organized or in which that Person's applicable lending office is located or is deemed to be doing business (other than solely due to the transactions contemplated hereby) on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other applicable jurisdiction, as the context may require.

## **Section 1.2 Interpretation.**

(a) The use of defined terms herein is for convenience of reference and shall not be deemed to be limiting or to have any other substantive effect with respect to the persons or things to which reference is made through the use of such defined terms. Numbered and titled article and section headings herein are included for convenience of reference and shall not constitute a part hereof for any other purpose.

(b) When used herein, (i) the singular shall include the plural, and vice versa, and the use of the masculine, feminine or neuter gender shall include all other genders, as appropriate, (ii) "include", "includes" and "including" shall be deemed to be followed by "without limitation" regardless of whether such words or words of like import in fact follow same, and (iii) unless the context clearly indicates otherwise, the disjunctive "or" shall include the conjunctive "and".

(c) As used in this Agreement, unless otherwise specified the words "hereof," "herein" and "hereunder" and words of similar import shall refer to this Agreement including all schedules and exhibits hereto, as a whole, and not to any particular provision of this Agreement, and the words "Article", "Section", "Paragraph", "Exhibit" and "Schedule" refer to articles, sections, paragraphs, exhibits and schedules of or to this Agreement.

(d) Any reference herein to any instrument, document or agreement, by whatever terminology used, shall be deemed to include any and all amendments, modifications, supplements, extensions, renewals, substitutions or replacements thereof as the context may require.

(e) Any definition of or reference to any law or regulation herein shall be construed to refer to such law or regulation as amended, replaced, modified (subject to any restrictions on such amendments, amendments and restatements, supplements or modifications set forth herein) and shall include any rules and regulations promulgated or published thereunder and published interpretations thereof as from time to time in effect.

(f) No inference in favor of, or against, any party to this Agreement or any other Loan Document shall be drawn from the fact that such party or its counsel has drafted all or any portion of this Agreement or any other Loan Document.

## **ARTICLE 2**

### **LOANS**

#053117

**Section 2.1 Commitment; Advances.**

(a) Subject to the terms and conditions of this Agreement, Lender agrees to make an Advance to Borrower on each Funding Date in a principal amount equal to the sum of:

(i) the Premium Payment(s) necessary to maintain the Life Insurance Policy in force through the next succeeding Policy Anniversary Date (or any other date as determined by Lender) without lapse or the commencement of any grace or notice period and with respect to the Advance made on the Initial Loan Funding Date, if an Existing Loan is outstanding as of such Initial Loan Funding Date, the amount necessary to repay, satisfy and discharge the Existing Loan in full (provided that such amount shall be subject to the approval of Lender in its discretion); plus

(ii) if elected by Borrower in writing to Lender prior to any Interest Payment Date or prior to such Funding Date in the applicable Borrowing Request, the aggregate amount of unpaid interest which has accrued in respect of the outstanding principal balance of the Loan through and including such Funding Date; plus

(iii) if elected by Borrower in writing to Lender prior to such Funding Date in the Borrowing Request, the amount of the Loan Origination Fee due and payable on such Funding Date;

provided that in no event shall the outstanding aggregate principal balance of the Loan, excluding interest that has been capitalized and added to the principal amount of the Loan under this Agreement, exceed the Commitment Amount and provided further that Lender shall have no obligation to make an Advance on any Funding Date unless and until each of the conditions precedent set forth in Section 3.2 shall have been satisfied or otherwise waived by Lender in its sole discretion with respect to such Advance (the "Commitment"). Any amount of any Advance borrowed and subsequently repaid or prepaid may not be reborrowed.

(b) The Commitment hereunder (i) may, at the option of Lender in its sole discretion, terminate if Borrower has not satisfied each of the conditions set forth in Section 3.1 hereof and the Initial Loan Funding Date has not occurred on or before the date that is thirty (30) days after the date of execution of this Agreement, and (ii) shall terminate immediately on the Commitment Termination Date without further action by any Person.

**Section 2.2 Borrowing Procedures.** With respect to any Advance to be requested by Borrower hereunder, Borrower shall complete, execute and deliver a Borrowing Request to Lender prior to 11:00 a.m., New York City time, on or before the day that is two (2) Business Days prior to the proposed Funding Date. Upon satisfaction or waiver in writing by Lender of each of the conditions precedent specified in Section 3.2, on the proposed Funding Date, Lender will disburse the proceeds of the applicable Advance specified in the related Borrowing Request to be made on such Funding Date to Borrower by (i) transferring to or for the account of Lender (or another party, as applicable) the amounts of the interest, Loan Origination Fee, or other amounts payable to Lender that are included in the proceeds of such Advance as directed by Borrower in the applicable Borrowing Request and (ii) causing the balance of such proceeds to

be transferred to the Insurer (or another party, as applicable) as directed by Borrower in the applicable Borrowing Request.

**Section 2.3 Loan Origination Fee.** On or before the Initial Loan Funding Date, Borrower shall pay to Lender the applicable Loan Origination Fee in Immediately Available Funds.

**Section 2.4 Evidence of Indebtedness.** Borrower shall execute and deliver to Lender a Promissory Note to evidence the indebtedness of Borrower to Lender in connection with the Loan. In addition, Lender shall maintain on its internal records an account evidencing the indebtedness of Borrower to Lender in connection with the Loan, including the amount of the Advances and any repayment or prepayment in respect thereof and any cash interest payments made on the Loan and any interest and other amounts capitalized and added to the principal amount thereof. Any such records maintained by Lender shall be prima facie evidence of the existence and aggregate amount of the Loan and shall be conclusive and binding on Borrower, absent manifest error; provided, that any failure to maintain any such records shall not affect the existence or validity of, or Borrower's obligation to pay and perform any of, the Obligations in accordance with the Loan Documents. Borrower shall, promptly upon the request of Lender at any time and from time to time, execute and deliver one or more amended and restated Promissory Notes to Lender reflecting additional Advances relating thereto.

**Section 2.5 Interest; Repayment of Loan.**

(a) The Borrower shall pay interest on the outstanding principal balance of the Loan on each day at the Applicable Interest Rate in effect on such day; provided, however, that in no event shall the interest payable in respect of the Loan exceed the maximum amount collectible from time to time under Applicable Law.

(b) Interest on the Loan shall be due and payable in cash and in arrears on each Interest Payment Date and at such other times specified herein.

(c) Borrower may, so long as no Event of Default is then continuing, elect to have any accrued and unpaid interest on the Loan which is due and payable on any Interest Payment Date or other date be capitalized and added to the outstanding principal amount of the Loan by delivering a completed and executed Borrowing Request to Lender at least two (2) Business Days prior to the next scheduled Funding Date. If Borrower so delivers a Borrowing Request with respect to any such interest to Lender, and no Event of Default is continuing on such Funding Date, then the amount of such accrued and unpaid interest shall be immediately capitalized and added to the outstanding principal amount of the Loan on such date.

(d) To the extent permitted by Applicable Law, interest payable hereunder and under any of the other Loan Documents shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues. In computing such interest for any period, the first and last days on which the Loan is outstanding during such period shall be included.



(e) The entire outstanding principal balance of the Loan, together with all accrued and unpaid interest thereon and all other outstanding Obligations, shall be due and payable in full on the Maturity Date.

**Section 2.6 Default Interest.** Upon the occurrence and during the continuance of an Event of Default, the outstanding principal balance of the Loan and any accrued and unpaid interest on the Loan and any fees or other amounts owed hereunder or under any other Loan Document which are not paid when due, in each case whether at stated maturity, by notice of prepayment, by acceleration or otherwise, shall thereafter bear interest on each day payable on demand at a rate that is two percentage points (2.0%) per annum in excess of the Applicable Interest Rate in effect on such day until paid in full; provided, however, that in no event shall the interest payable in respect of the Loan exceed the maximum amount collectible from time to time under Applicable Law.

**Section 2.7 Prepayments.** Borrower may prepay the Loan, without premium or penalty, on any Business Day, in whole or in part, and upon not less than five (5) Business Days prior written or telephonic notice (if telephonic, confirmed in writing) given to Lender by 11:00 a.m., New York City time, on the date required. Any notice of prepayment given to Lender pursuant to this Section 2.7 shall be irrevocable once given. Upon the giving of any such notice, the amount of the outstanding principal balance of the Loan specified to be prepaid in such notice, together with all accrued and unpaid interest thereon, shall be due and payable in full on the prepayment date specified therein. Any amounts so prepaid on the Loan may not be re-borrowed.

**Section 2.8 General Provisions Regarding Payments.**

(a) All payments by Borrower of principal, interest and other Obligations shall be made not later than 2:00 p.m., New York City time, on the date when due and in Immediately Available Funds, without defense, setoff or counterclaim, free of any restriction or condition, pursuant to Lender's Wire Instructions. Any payments received by Lender from Borrower after that time on any such due date shall be deemed to have been paid by Borrower on the next succeeding Business Day.

(b) All payments by Borrower in respect of principal of the Loan shall include payment of accrued and unpaid interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of the Loan on a date when interest is due and payable with respect thereto) shall be applied to the payment of accrued and unpaid interest before application to principal of the Loan.

(c) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of the payment of interest hereunder.

**Section 2.9 Funding Losses.** Borrower hereby agrees to indemnify and defend and hold harmless Lender from and against, and on demand reimburse Lender for, any loss, premium, penalty or expense that Lender may pay or incur as a result of (a) any prepayment of

principal of the Loan (other than pursuant to Section 2.7, or the death of any Insured), (b) any failure by Borrower to borrow any Advance on any date specified therefor in any Borrowing Request delivered to Lender, except to the extent such failure results solely from a default by Lender in making the requisite funds available to Borrower hereunder, or (c) any failure by Borrower to make any prepayment on any date specified therefor in a notice of prepayment delivered to Lender pursuant to Section 2.7. Lender shall furnish Borrower with a certificate setting forth the basis for determining any additional amounts to be paid to the Lender hereunder, and such certificate shall be conclusive and binding upon Borrower, absent manifest error.

**Section 2.10 Increased Costs.** In the event that Lender shall determine (which determination shall be final, conclusive and binding upon Borrower, absent manifest error) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other Governmental Authority (regardless of whether having the force of law):

(a) subjects Lender, its assigns or participants to any additional Tax (other than any Tax on the overall net income of Lender) with respect to this Agreement, the transactions contemplated hereby, the assignment or participation of any interest granted herein, any of Lender's obligations hereunder or any payments to Lender (or its applicable lending office), its assigns or participants of principal, interest, penalties, fees or any other amount payable hereunder; or

(b) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by Lender; or

(c) imposes any other condition (other than with respect to a Tax matter) on or affecting Lender (or its applicable lending office) or its obligations under the Loan Documents; or

(d) increases the cost to Lender of agreeing to make or making Advances or maintaining the Loan hereunder; or

(e) reduces the amount of interest, or any amount received or receivable by Lender with respect thereto; or

(f) requires Lender to make any payment or to forego any interest or other sum payable under the Loan Documents, the amount of which payment or foregone interest or other sum is calculated by reference to the gross amount of any sum receivable or deemed received by Lender from Borrower hereunder or thereunder; then, in any such case, Borrower shall promptly



pay to Lender, upon receipt of a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.10, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as Lender in its sole discretion shall determine) as may be necessary to compensate Lender for any such increased cost or reduction in amounts received or receivable hereunder. Any such statement shall be final, conclusive and binding upon Borrower, absent manifest error.

#### **Section 2.11 Taxes.**

(a) Subject to Section 2.10, all sums payable by Borrower hereunder and under the other Loan Documents shall (except to the extent required by Applicable Law or the provisions hereof) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of Lender) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of Borrower or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) If Borrower or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable thereby to Lender under any of the Loan Documents: (i) Borrower shall notify Lender of any such requirement or any change in any such requirement as soon as Borrower becomes aware of such requirement; (ii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on Borrower) for its own account or (if that liability is imposed on Lender) on behalf of and in the name of Lender; (iii) the sum payable thereby in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Lender receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax that it is required by clause (ii) above to pay, Borrower shall deliver to Lender evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

**Section 2.12 Change in Circumstances.** Notwithstanding any other term or provision of this Agreement or any other Loan Document, if after the date of this Agreement the introduction of, or any change in, any Applicable Law or in the interpretation or administration thereof by any Governmental Authority shall, in the opinion of Lender, make it unlawful for the Lender to make or maintain the Loan under this Agreement (each such occurrence, an "Illegality"), then the commitment of Lender to make Advances hereunder shall be terminated and Lender may, by written notice to Borrower, declare that any or all of the Obligations shall be forthwith due and payable by Borrower. Borrower shall repay the Obligations declared so due and payable on the date set forth in such written notice from Lender to Borrower, unless the Loan is required by Applicable Law to be repaid sooner, in which case Borrower shall repay the Loan on the date required by Applicable Law. The prepayment of the Loan or portion thereof

shall, in any case, be made together with accrued interest thereon. Lender will promptly notify Borrower of any event of which Lender has knowledge that will entitle Lender to accelerate the repayment of the Loan pursuant to this Section 2.12.

**Section 2.13 Release of Collateral.** Except in a situation to which Section 6.3 applies, upon the full and final payment of the Loan, the termination of the Commitment and the full and final payment or satisfaction, as the case may be, of all of the other Obligations, Lender's Liens on the Collateral shall be released and any and all remaining Collateral shall be delivered to or as directed by Borrower (or, in the case of Collateral has been pledged or delivered by any Collateral Provider other than the Insured, the Collateral Provider).

### ARTICLE 3

#### CONDITIONS PRECEDENT

**Section 3.1 Closing Date Conditions.** The "Closing Date" is the date on which all of the following conditions precedent have been satisfied, as determined by Lender in its sole and absolute discretion:

(a) Lender shall have received each Loan Document, duly executed and delivered by Borrower and each of the other parties thereto (other than Lender), as applicable;

(b) With respect to Borrower, the Insured, any other Collateral Provider and the Life Insurance Policy, Lender shall have received the following, all in form and substance satisfactory to Lender: (i) the Articles of Organization, (ii) an original of the Life Insurance Policy or, in the event that an original is not available prior to the Initial Loan Funding Date, a copy of such Life Insurance Policy, and a copy of each of the related policy illustration, application and policy delivery receipt, if available, (iii) the premium financing loan application, (iv) the Federal Tax returns of the Insured and any other Collateral Provider for the immediately preceding two (2) years, (v) a compilation and report of net worth of the Insured and any other Collateral Provider, and (vi) confirmation of the LLC's Federal Taxpayer Identification Number; and

(c) Lender shall have received such other instruments, documents, agreements, certificates and information in connection with this Agreement any other Loan Document, Borrower, the Insured, any other Collateral Provider, the Member, the Loan and the Life Insurance Policy, as Lender shall in each and every case reasonably require, and all of the foregoing shall be satisfactory to Lender.

**Section 3.2 Funding Date Conditions.** The obligation of Lender to make an Advance on any Funding Date (including the Initial Loan Funding Date, if applicable) shall be subject to the satisfaction, prior to or concurrently with the making of such Advance, as determined by Lender in its sole and absolute discretion, of each of the following conditions precedent:

(a) the Closing Date shall have occurred;

(b) Lender shall have received from Borrower a completed and executed Borrowing Request, in form and substance satisfactory to Lender, not later than 11:00 a.m., New York City time, on the day that is two (2) Business Days prior to the proposed Funding Date;

(c) not later than fifteen (15) days prior to such Funding Date (or, in the case of the Initial Loan Funding Date, such later prior date as shall be acceptable to Lender), Lender shall have received the projected Guaranteed Cash Surrender Value of the Life Insurance Policy for the thirteen (13) month period commencing on the Funding Date prepared by the Insurer, in form and substance satisfactory to Lender;

(d) on or before such Funding Date, Lender shall have received the applicable Loan Origination Fee in accordance with Section 2.3 and Lender shall have been (or contemporaneously with the funding of the requested Loan shall be) paid or reimbursed in full for all Lender Expenses due and payable to Lender and not previously paid by Borrower or the Insured;

(e) Lender shall be satisfied that, after giving effect to such Advance, the aggregate outstanding principal amount of the Loan (including such Advance, but excluding interest that has been capitalized and added to the principal amount of the Loan under this Agreement) will not exceed the Commitment Amount;

(f) if there is an Existing Loan, such Existing Loan shall have been repaid, satisfied and discharged in full, and all related liens and security interests shall have been released and terminated (or provisions satisfactory to Lender for such release and termination shall have been made), prior to or contemporaneously with the making of the Advance made or to be made on the Initial Loan Funding Date;

(g) the Collateral Requirement shall have been satisfied on and as of such Funding Date after giving effect to the Advance to be made on that date;

(h) no approvals, authorizations, consents, licenses or registrations of, from or with any Governmental Authority or any other Person shall be necessary or required in connection with any of the transactions contemplated by this Agreement or any other Loan Document, and no order, decree, judgment, ruling or injunction of any Governmental Authority shall exist, and no Applicable Law shall be in effect or contemplated and no other action shall have been taken or threatened by any Governmental Authority, that would restrain, prevent or otherwise adversely affect the Life Insurance Policy, any Loan Document, any Loan, any of the Collateral, or any other transactions contemplated by this Agreement or by any other Loan Document;

(i) if the Collateral Requirement is to be satisfied in whole or in part by any Eligible Assets pledged by the Insured or any other Collateral Provider to Lender, the creation by the Insured or other Collateral Provider (as applicable) of the Collateral Account with the Collateral Intermediary and the receipt by Lender of the Collateral Account Control Agreement relating to the Collateral Account, duly executed by the Insured or other Collateral Provider (as applicable) and the Collateral Intermediary;

(j) if the Collateral Requirement is to be satisfied in whole or in part by any Eligible Letter of Credit, Lender shall have received such Eligible Letter of Credit from the applicable Letter of Credit Issuer;

(k) Lender shall have received such other instruments, documents, agreements, certificates and information in connection with this Agreement, any other Loan Document, the Borrower, the Insured, any other Collateral Provider, the Member, the Insurer, the Life Insurance Policy, any other Collateral, and the Collateral Intermediary, in each and any case as Lender shall reasonably require, and all of the foregoing shall be satisfactory to Lender;

(l) the representations and warranties contained herein and in the other Loan Documents shall be true and correct on and as of such Funding Date with the same effect as though made on and as of that date, except to the extent that any representation or warranty is expressly made as of a specified earlier date, in which event such representation or warranty shall be true and correct as of such earlier date; and

(m) no Default or Event of Default shall have occurred and be continuing or would result from the making of such Advance or the consummation of the other transactions contemplated hereby.

#### ARTICLE 4

##### REPRESENTATIONS AND WARRANTIES

In order to induce Lender to enter into this Agreement and the other Loan Documents and to make any Advance, Borrower hereby represents and warrants to Lender, as of the Closing Date and each Funding Date, as follows:

###### **Section 4.1 Organization, Etc.**

(a) Borrower is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Borrower has the requisite capacity and has all requisite power and authority, in each case, to own the Life Insurance Policy and its other assets and properties, to conduct its affairs as now conducted and as proposed to be conducted, to enter into and perform all of its obligations under the Loan Documents to which it is a party and to carry out the transactions contemplated thereunder.

(b) The Trustee or Member has been authorized by all necessary action under the Operating Agreement to cause Borrower to enter into each of the Loan Documents to which it is a party and to request, receive and repay the Loan hereunder.

**Section 4.2 Due Authorization.** The execution, delivery and performance of the Loan Documents to which Borrower is a party have been duly authorized by all necessary action on the part of Borrower.

**Section 4.3 Execution and Delivery; Enforceability.** Each Loan Document to which Borrower is a party has been duly executed and delivered by Borrower and constitutes the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance

with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

**Section 4.4 Life Insurance Collateral.** Borrower is the sole direct legal and beneficial owner of, and has good and marketable title to, and is the sole and duly designated beneficiary under, the Life Insurance Policy. Lender has a valid, binding, perfected first priority Lien in the Life Insurance Policy, free and clear of any Lien in favor of any other Person. To Borrower's and the Insured's knowledge, the Life Insurance Policy is in full force and effect and constitutes the valid and binding obligation of the applicable Insurer, enforceable in accordance with its terms. To Borrower's and the Insured's knowledge, the Life Insurance Policy and obligations of the Insurer thereunder are not subject to any right of rescission, set-off, recoupment, or any counterclaim or defense, and no such right, counterclaim or defense has been asserted. There is no default, breach or violation under the Life Insurance Policy, and no event has occurred that, with notice and/or the expiration of any grace or cure period, would constitute a default, breach or violation under the Life Insurance Policy.

**Section 4.5 No Conflict.** The execution, delivery and performance by Borrower of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereunder do not and will not (i) violate any provision of any Applicable Law applicable to Borrower, any of the organizational documents of Borrower or any order, judgment or decree of any court or other Governmental Authority binding on Borrower or any of its properties or assets, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation of Borrower, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of Borrower (other than any Liens created under any of the Loan Documents in favor of Lender), or (iv) require any approval, authorization or consent of, notice to, or other action to, with or by any other Person under any contractual obligation of Borrower.

**Section 4.6 Authorizations.** The execution, delivery and performance by Borrower of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereunder, the creation and perfection of any Lien thereunder or the exercise of any rights and remedies by Lender thereunder do not and will not require any registration, filing or recording with, or consent, authorization or approval of, notice to, or other action to, with or by, any Governmental Authority or any other Person, except for acknowledgments, filings and recordings with respect to the Collateral to be pledged or otherwise delivered to Lender as of the Closing Date.

**Section 4.7 No Adverse Proceedings.** There are no actions, suits, proceedings (whether administrative, judicial or otherwise), governmental investigations or arbitrations (regardless of whether purportedly on behalf of Borrower or the Insured) at law or in equity, or before or by any Governmental Authority, that are pending or, to the knowledge of Borrower, threatened against or affecting (a) Borrower, the Insured, any other Collateral Provider, the Life Insurance Policy or any other properties or assets of Borrower, the Insured, any other Collateral Provider, or any other Collateral or (b) the validity, enforceability, perfection or priority of any Loan Document or any Lien created thereunder.



**Section 4.8 Compliance With Applicable Laws.** Borrower is in compliance with all Applicable Laws. Borrower is not subject to or in default with respect to any final judgments, writs, injunctions or decrees of any court or other Governmental Authority.

**Section 4.9 Payment of Taxes.** Except as otherwise permitted by Section 5.5, all tax returns and reports of Borrower required to be filed have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Borrower and upon its properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable. Borrower does not know of any tax Lien or other assessment against Borrower or any of its assets or properties. Borrower is not subject to any Internal Revenue Service, state or local governmental authority review, notice of deficiency, tax assessment, audit notice or equivalent review regarding the tax benefits or tax payable in connection with the purchase, holding or transfer of the Life Insurance Policy.

**Section 4.10 No Defaults.** Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its material contractual obligations, and no condition exists that, with the giving of notice or the lapse of time or both, could constitute such a default.

**Section 4.11 Borrower Activities.** Borrower does not engage in any business or activity other than owning the Life Insurance Policy and performing its obligations under and conducting activities incidental to the Loan Documents and, to the extent not inconsistent therewith, the Life Insurance Policy and any arrangements with the Insured or any other Collateral Provider that are necessary in order to enable Borrower to satisfy the Collateral Requirement.

**Section 4.12 Certain Fees.** No broker's or finder's fee or commission will be payable by Borrower or Lender to any other Person with respect to the making of any Advance hereunder or any of the transactions contemplated by any Loan Document.

**Section 4.13 Disclosure.** No representation or warranty of Borrower, the Insured or any other Collateral Provider in any Loan Document or in any other documents, certificates or written statements furnished to Lender by or on behalf of Borrower, the Insured or any other Collateral Provider, for use in connection with any Loan Document or any of the transactions contemplated hereby or thereby contains any untrue statement of a material fact or omits to state a material fact (known to Borrower, the Insured or such other Collateral Provider in the case of any document, certificate or statement not furnished by Borrower, the Insured or such other Collateral Provider) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made.

**Section 4.14 Insured Certificate.** The certifications of the Insured set forth in the Certificate of Insured are true and correct. The Insured has the financial and legal capacity to enter into and perform his or her obligations under and in respect of the Loan Documents and to provide Borrower with sufficient funds so that Borrower may pay and perform the Obligations.

**Section 4.15 No Inducements.** Neither Borrower nor the Insured has received any payment or other inducement to cause the Life Insurance Policy to be issued or any other

compensation in connection with the issuance of the Life Insurance Policy, the making of any Advance or the entering into of the Loan Documents.

**Section 4.16 Other Loan Documents.** The representations and warranties of the Insured and any other Collateral Provider in any Loan Document to which such Person is a party are true and correct.

**Section 4.17 Additional Representations.** None.

## ARTICLE 5

### COVENANTS

Borrower hereby covenants and agrees with Lender that, from and after the date of this Agreement until all of the Obligations have been paid and performed in full and this Agreement and the other Loan Documents shall have been terminated:

**Section 5.1 Payment and Performance of Obligations.** Borrower will pay the principal of and interest on the Loan as and when due and payable and will timely pay or perform, as the case may be, all of the other Obligations.

**Section 5.2 Life Insurance Policy.**

(a) Borrower will at its sole cost and expense maintain the Life Insurance Policy in full force and effect. Borrower will not agree to any amendment, restatement, supplement or other modification to, or waiver of any of its rights under the Life Insurance Policy, in each case after the Closing Date without obtaining the prior written consent of Lender thereto.

(b) Borrower will comply with all terms, conditions and provisions of the Collateral Assignment of Life Insurance.

(c) Borrower will cooperate with Lender in obtaining any additional information from the Insurer that Lender may reasonably request from time to time in respect of the Life Insurance Policy.

(d) Borrower will not take any action in contravention of or that would otherwise limit or impair Lender's collateral assignment of or security interest in the Life Insurance Policy, or create, grant, incur or permit to exist any Lien on the Life Insurance Policy other than in favor of Lender.

(e) Borrower will not take any action under or with respect to the Life Insurance Policy without the prior written consent of Lender, and Borrower will take such actions with respect to the Life Insurance Policy as Lender may from time to time reasonably request.

(f) Borrower will, within ten (10) Business Days after the Initial Loan Funding Date, deliver or cause to be delivered to Lender the original Life Insurance Policy (or a copy of the original Life Insurance Policy) and the related policy delivery receipt if such original Life



Insurance Policy and policy delivery receipt were not delivered to Lender prior to the Initial Loan Funding Date.

(g) Upon the death of the Insured, Borrower will provide immediate notice thereof to Lender. Borrower will also provide prior or concurrent notice to Lender of any claim for death benefits submitted to the Insurer. Borrower acknowledges and agrees that disbursement of any of any proceeds of the Life Insurance Policy will be subject to the terms, conditions and provisions of the Collateral Assignment of Life Insurance and, without limiting the foregoing, Borrower acknowledges and agrees that the Obligations must be fully paid and performed prior to the making of any distributions to any of Borrower's beneficiaries.

**Section 5.3 Information.** Borrower will deliver to Lender, promptly upon their becoming available, copies of (a) all statements, reports, notices, illustrations, projections and other information sent or made available by the Insurer to Borrower with respect to the Life Insurance Policy or otherwise, (b) all financial statements, reports, notices and proxy statements sent or made available by Borrower and (c) such other information and data with respect to Borrower, the Insured, any other Collateral Provider, or the Life Insurance Policy as from time to time may be reasonably requested by Lender.

**Section 5.4 Existence.** Borrower will at all times preserve and keep in full force and effect its legal and effective existence, status of good standing under the laws of its jurisdiction of formation, and all rights, franchises, licenses, authorizations and approvals material to its activities.

**Section 5.5 Payment of Taxes and Claims.** Borrower will pay and discharge all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, all claims for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets prior to the time when any penalty or fine shall be incurred with respect thereto and all fees and expenses of the Member (including attorneys' fees) when due; provided that no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision shall have been made therefore and, in the case of a charge or claim that has or may become a Lien against any of Borrower's property, such contest proceedings conclusively operate to stay the sale of any portion of such property to satisfy such Tax or claim.

**Section 5.6 Books and Records.** Borrower will keep and maintain proper books and records in which full, true and correct entries in conformity with GAAP shall be made of its dealings and transactions. Borrower will permit any authorized representative designated by Lender to visit Borrower, to inspect, copy and take extracts from its books and records and to discuss its affairs, finances and accounts with the Member, its independent public accountants and its beneficiaries, if any, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested by Lender.

**Section 5.7 Compliance with Applicable Laws.** Borrower will comply with all Applicable Laws.

**Section 5.8 Borrower Activities.** Borrower will not, directly or indirectly, without the prior written consent of Lender, (a) create, assume, incur or otherwise become liable for any indebtedness or any other obligation or liability whatsoever other than the Obligations; (b) create, assume, incur or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it (other than any Liens created under any of the Loan Documents in favor of Lender); (c) own any assets or engage in any business or activity other than owning the Life Insurance Policy and performing its obligations under and activities incidental to the Loan Documents and, to the extent not inconsistent therewith, the Life Insurance Policy and any arrangements with the Insured or any other Collateral Provider that are necessary in order to enable Borrower to satisfy the Collateral Requirement; (d) consolidate with or merge with or into, or convey, transfer or lease any material assets to, any Person; (e) create or acquire any subsidiary or make or own any investment in any Person, (f) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons; (g) amend, modify or supplement the Operating Agreement or any of Borrower's other organizational documents without the prior written consent of Lender (not to be unreasonably withheld); (h) sell, assign, transfer or otherwise dispose of the Life Insurance Policy; (i) surrender in whole or in part the Life Insurance Policy or cause or permit any amendment, restatement, supplement, endorsement, rider or other modification to, or waiver of, or exercise of, any of the Borrower's rights under the Life Insurance Policy; or (j) make any withdrawals from or obtain any loans secured by the Life Insurance Policy.

**Section 5.9 Collateral Value.** Borrower will at all times comply with the Collateral Requirement. Borrower will not at any time permit the aggregate amount of the Collateral (with the value of the Life Insurance Policy being deemed to be the Guaranteed Cash Surrender Value) pledged or delivered to Lender in satisfaction of the Collateral Requirement to be less than the Required Collateral Value in effect at such time.

## ARTICLE 6

### EVENTS OF DEFAULT AND REMEDIES

**Section 6.1 Events Default.** The occurrence and continuance of any of the following events shall constitute an "Event of Default":

(a) Failure by (i) Borrower to pay when due any interest on or principal of the Loan or any Loan Origination Fee, whether at the scheduled due date, at stated maturity, by acceleration or otherwise or (ii) Borrower or the Insured or any other Collateral Provider to pay when due any Lender Expenses or any other amounts required to be paid under this Agreement or any other Loan Document within five (5) Business Days after the date when due or, if no such date is specified, after demand by Lender; or

(b) Failure by Borrower or the Insured or any other Collateral Provider to perform or comply with any covenant or agreement contained (i) in Section 5.8 of this Agreement, (ii) Section 2.1, Section 2.3(a), Section 2.3(c) and Section 4.1 of the Collateral Agreement or (iii) any other provision of this Agreement or in any other Loan Document to which such Person is a party (other than those referred to in the other lettered subsections of this Section 6.1) and, if any such failure under this clause (iii) is susceptible of being remedied by such Person, such

failure shall continue unremedied for a period of thirty (30) days after notice to such Person of such failure; or

(c) Failure by Borrower to comply with Section 5.9 at any time and Borrower or the Insured or any other Collateral Provider shall fail to pledge or deliver, or to cause to be pledged or delivered, to Lender within five (5) Business Days following receipt by the Insured or such other Collateral Provider of a Collateral Notice from Lender, Eligible Collateral in accordance with the requirements of this Agreement and the Collateral Agreement in an aggregate amount sufficient to cause the then applicable Collateral Requirement to be satisfied; or

(d) any representation, warranty, certification or other statement made or deemed made by Borrower, the Insured or any other Collateral Provider in any Loan Document or in any statement or certificate at any time given by Borrower, the Insured or any other Collateral Provider in writing pursuant hereto or thereto or in connection herewith or therewith shall be false, inaccurate or incomplete in any material respect as of the date made or deemed made; or

(e) any Collateral or any right, remedy or power of Lender with respect thereto shall in Lender's determination be adversely affected as a result of (i) any of the Collateral becoming attached for execution or becoming subject to the order of any court or other Governmental Authority or any other process for attachment and execution, or (ii) the failure of Lender to have a valid, enforceable, perfected first priority Lien in, to or on any of the Collateral (other than a Letter of Credit); or

(f) Borrower, the Insured or any other Collateral Provider shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors; or any case or proceeding (herein, a "proceeding") shall be instituted by or against Borrower, the Insured or any other Collateral Provider seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not one instituted by it), either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or Borrower, the Insured or any other Collateral Provider shall adopt any resolution to or otherwise authorize any of the actions set forth above in this Section 6.1(f); or

(g) at any time after the execution and delivery thereof, (i) any Loan Document or any material portion thereof ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof and thereof) or shall be declared null and void, or Lender shall not have or shall cease to have a valid and perfected first priority Lien in or on any of the Collateral (or, in the case of a Letter of Credit, Lender shall fail to be the beneficiary and in possession of such Letter of Credit free and clear of any Lien in favor of any other Person) other than by reason of a release of Collateral in accordance with the terms hereof

or thereof, or (ii) any Person shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further obligation or liability, including with respect to future advances by Lender, under any Loan Document to which it is a party; or

(h) any judgment or order for the payment of money shall be rendered against Borrower and the same shall remain undischarged for a period of thirty (30) calendar days during which execution of such judgment or order shall not be effectively stayed; or

(i) any non-monetary judgment or order shall be rendered against Borrower, the Insured or any other Collateral Provider that could in Lender's determination adversely affect the validity, legality, or enforceability of the Life Insurance Policy, the Loan, any Loan Document or any other Collateral, or the ability of Borrower, the Insured or any other Collateral Provider to pay or perform any of the Obligations, and there shall be any period of ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(j) the cancellation, termination, surrender, rescission or successful contest of the Life Insurance Policy, the suicide of the Insured or the occurrence of any other event or circumstance that causes the Life Insurance Policy to cease to be in full force and effect; or

(k) at any time after the Initial Loan Funding Date, the Insurer shall not have, or shall cease to have, a Credit Rating equal to or better than the Minimum Insurer Credit Rating; or

(l) there shall be a change of the Member under the Operating Agreement without the prior written consent of Lender (such consent not to be unreasonably withheld); or

(m) this Agreement or any other Loan Document or any of the transactions contemplated hereunder or thereunder is declared or claimed (as a result of any existing or future law or any change thereto) by a Governmental Authority having jurisdiction over Lender, Borrower, the Insured or any other Collateral Provider to be or is determined by the Lender to be or is reasonably expected by the Lender to be, unenforceable, illegal or usurious.

## Section 6.2 Remedies.

(a) Automatically upon the occurrence of any Event of Default described in Section 6.1(f), and at Lender's option upon the occurrence and during the continuance of any other Event of Default, the Commitment shall immediately terminate and the unpaid principal amount of and accrued and unpaid interest on the Loan, together with all other Obligations, shall immediately become due and payable without presentment, demand, protest or other notice or requirement of any kind, all of which are hereby expressly waived by Borrower.

(b) In addition to the rights and remedies set forth elsewhere herein or in any other Loan Document, upon the occurrence and during the continuance of an Event of Default, Lender may:

(i) draw upon all or any portion of the amount available to be drawn under any Letter of Credit, and exercise, with respect to any or all of the Collateral, all rights

and remedies provided for herein or in any other Loan Document or otherwise available to Lender under any Applicable Law or in equity and all rights and remedies of a secured party on default under the UCC (regardless of whether the UCC applies to any of the subject Collateral);

(ii) execute any agreement, instrument or document and take all such actions and do all other things necessary and proper in its determination to protect, preserve and realize upon the Collateral and other rights contemplated hereunder and under the other Loan Documents; and

(iii) exercise any and all other rights, powers, privileges, options and remedies now or hereafter available to Lender pursuant to or in connection with this Agreement or the other Loan Documents, under Applicable Law or principles of equity, or otherwise.

**Section 6.3 Application of Proceeds.** Upon the occurrence and during the continuance of an Event of Default, Lender may apply any payments made in respect of the Obligations, any of the Collateral, any and all Proceeds thereof and any other proceeds of the exercise of any of Lender's other rights and remedies to the satisfaction of the Obligations in the following order of priorities:

first, to the payment of all Loan Origination Fees, all Lender Expenses and all other unpaid fees, costs, expenses, liabilities and advances incurred or made by Lender in connection with the collection or enforcement of any of the Obligations or any Loan Document and to the payment of all other unpaid fees, costs and expenses and indemnities owing to Lender under any Loan Document;

second, to the payment of all amounts then due to Lender under Section 2.9 or 2.10;

third, to the payment of all accrued and unpaid interest (regardless of whether due) on the Loan;

fourth, to the payment of all outstanding principal (regardless of whether due) of the Loan;

fifth, to the payment of all other Obligations (regardless of whether due); and

sixth, to Borrower, or such other Person as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

**Section 6.4 Lender May Perform.** If Borrower, the Insured or any other Collateral Provider fails to perform any covenant or agreement contained herein or in any other Loan Document, Lender may itself perform, or cause performance of, such covenant or agreement, and all Lender Expenses paid or incurred by Lender in connection therewith shall be immediately due and payable by Borrower hereunder.

**Section 6.5 Standard of Care.** Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Lender shall have no duty or other obligation to any other Person as to any Collateral



or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Lender shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially similar to that which Lender accords its own property. Neither Lender nor any of its affiliates, nor any of its or their respective directors, officers, employees, attorneys or agents shall be liable for failure to demand, collect, draw on or realize upon all or any part or the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Borrower, the Insured or any Collateral Provider or otherwise.

**Section 6.6 No Duty on Part of Lender.** The rights, remedies and powers conferred on Lender hereunder and under any other Loan Document are solely to protect its interests in the Obligations and its rights and interests in the Collateral and shall not impose any duty or other obligation upon Lender to exercise any such rights, remedies and powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such rights, remedies and powers, and neither Lender nor any of its affiliates, nor any of its or their respective directors, officers, employees, attorneys or agents shall be responsible to Borrower, the Insured, any other Collateral Provider or any other Person for any act or failure to act hereunder or under any other Loan Document, except for its own gross negligence or willful misconduct.

## ARTICLE 7

### MISCELLANEOUS

**Section 7.1 Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person or when sent by facsimile or other electronic means and electronic confirmation of error free receipt is received or one (1) day after being sent by nationally recognized overnight express courier, delivery fee prepaid, or three (3) days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth under its signature on the signature page hereto.

**Section 7.2 Costs and Expenses.** Regardless of whether the transactions contemplated hereunder or under any other Loan Document shall be consummated, Borrower shall pay to the Lender all Lender Expenses within ten (10) Business Days following written demand therefor.

### Section 7.3 Indemnification.

(a) Without limiting any indemnification obligations under any other Loan Document, in addition to the payment of fees, costs and expenses pursuant to Section 7.2, and regardless of whether the transactions contemplated hereunder or under any other Loan Document shall be consummated, Borrower shall indemnify, defend, pay and hold harmless Lender, each of its successors, assigns and participants, each of its and their respective affiliates, and each of its and their respective directors, officers, employees, attorneys and agents (each, an

"Indemnitee") from and against, and shall pay and reimburse each Indemnitee on demand for, any and all Indemnified Liabilities; provided that Borrower shall not be required to indemnify any Indemnitee for any Indemnified Liabilities hereunder to the extent such Indemnified Liabilities are determined to have resulted from the gross negligence or willful misconduct of such Indemnitee as determined by a final nonappealable judgment in its favor on such claim by a court of competent jurisdiction. To the extent that the undertakings to indemnify, defend, pay and hold harmless set forth in this Section 7.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. The term "Indemnified Liabilities" used herein means, collectively, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, settlements, suits, claims, fees, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for any Indemnitee) directly or indirectly relating to or arising from, out of or in connection with any actual or prospective claim, litigation, investigation or proceeding commenced or threatened by any Person, regardless of whether any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by any Indemnitee in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by or asserted against any such Indemnitee, in any manner relating to or arising from, out of or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby or the Life Insurance Policy (including Lender's agreement to make any Advance or the use or intended use of the proceeds thereof or any enforcement of or other exercise of rights or remedies under any of the Loan Documents and any sale of, collection from or other realization upon any of the Collateral).

(b) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the provisions of this Section 7.3 shall survive the termination of this Agreement and any other Loan Document.

**Section 7.4 Power of Attorney.** Borrower hereby irrevocably and unconditionally constitutes and appoints Lender and any officer, agent or servicer thereof, with full power of substitution, as its true and lawful attorney-in-fact, with full irrevocable power and authority in the place and stead of Borrower and in the name of Borrower, Lender or otherwise, from time to time in Lender's discretion to take any and all appropriate action and to execute and deliver any and all documents or instruments that Lender may deem necessary or advisable to accomplish the intent and purposes of this Agreement and the other Loan Documents. The power of attorney set forth herein is irrevocable and coupled with an interest.

**Section 7.5 Set-Off.** Borrower hereby waives any right of setoff it may have or to which it may be entitled against Lender or its assets. In addition to any rights and remedies now or hereafter available under Applicable Law and not by way of limitation of any such rights or remedies, upon the occurrence of any Event of Default, Lender is hereby authorized by Borrower at any time or from time to time without notice to Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other indebtedness at

any time held or owing by Lender to or for the credit or the account of Borrower against and on account of the Obligations, including all claims of any nature or description arising out of or connected hereto or with any other Loan Document, regardless of whether Lender shall have made any demand hereunder or under any other Loan Document or the principal of or the interest on the Loan or any other amounts due hereunder or thereunder shall have become due and payable and although such obligations and liabilities, or any of them, may be contingent or unmatured.

**Section 7.6 Entire Agreement.** This Agreement and the other Loan Documents constitute the entire agreement of Lender and Borrower with respect to the Loan. Borrower acknowledges and agrees that there is no oral agreement between Borrower and Lender that has not been incorporated into this Agreement.

**Section 7.7 Amendments.** No amendment of any term or provision of this Agreement, nor any waiver thereof, shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then any such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which given.

**Section 7.8 Binding Effect; Assignments.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns, as applicable; provided, however, that Borrower may not directly or indirectly assign or transfer any of its rights or interests or delegate the performance of any of its obligations under this Agreement without the prior express written consent of Lender, and any attempt to make any such assignment, transfer or delegation without such consent shall be void and ineffective. Lender may at any time sell, assign or transfer all or a portion of any of its rights, titles, interests and obligations under this Agreement and any other Loan Document to any other Person on terms and conditions satisfactory to Lender. Lender may at any time sell one or more participations in all or any part of the Loan or in any of the other Obligations to any other Person on terms and conditions satisfactory to Lender.

**Section 7.9 Independence of Covenants.** All covenants and agreements hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants or agreements, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant or agreement shall not avoid the occurrence of an Event of Default if such action is taken or such condition exists.

**Section 7.10 Survival.** All covenants, agreements, representations and warranties made by Borrower in this Agreement or in any certificates or other documents prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by Lender and shall survive the execution and delivery of the Loan Documents and the making of the Loan.

**Section 7.11 No Waiver; Remedies Cumulative.** No failure or delay on the part of Lender in the exercise of any right, power, privilege, option or remedy hereunder or under any other Loan Document shall impair such right, power, privilege, option or remedy or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such right, power, privilege, option or remedy preclude other or further exercise



thereof or of any other right, power, privilege, option or remedy. The rights, powers, privileges, options and remedies given to Lender hereunder are cumulative and shall be in addition to and independent of all rights, powers and remedies under any other Loan Document or existing by virtue of any Applicable Law or principle of equity. Any forbearance or failure to exercise, and any delay in exercising, any right, power, privilege, option or remedy shall not impair any such right, power, privilege, option or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power, privilege, option or remedy.

**Section 7.12 Payments Set Aside.** To the extent that Borrower makes a payment or payments to Lender, or Lender enforces any claims or security interests or exercises its right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intend to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be restored and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

**Section 7.13 Limitation of Liability.** To the fullest extent permitted by Applicable Law, Borrower shall not assert, and Borrower hereby irrevocably and unconditionally waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any other Loan Document, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof, or the Life Insurance Policy. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

**Section 7.14 Severability.** Any provision of this Agreement that is prohibited or unenforceable with respect to any Person or circumstance or in any jurisdiction shall, as to such Person, circumstance or jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision with respect to other Persons or circumstances or in any other jurisdiction.

**Section 7.15 Governing Law.** **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW)) AND THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA.**

**Section 7.16 WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. The scope of this waiver is intended to be all-encompassing with respect to any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each of the parties hereto (a) acknowledges that this waiver is a material inducement for the parties to the Loan Documents to enter into a business relationship, that the parties to the Loan Documents have already relied on this waiver in entering into same and the transactions that are the subject thereof, and that they will continue to rely on this waiver in their related future dealings, and (b) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**Section 7.17 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes, and all of which shall collectively and separately constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 7.18 Status of Member.** The Person acting as Member is entering into this Agreement and the other Loan Documents solely in such Person's capacity as Member under the Operating Agreement, and not in such Person's individual capacity. In no case shall such Person be personally liable hereunder or thereunder for or on account of any of the statements, representation, warranties, covenants, indebtedness or obligations stated to be those of Borrower hereunder or thereunder, and any such liability of such Person is and shall be limited to the assets of Borrower.

**Section 7.19 Additional Acknowledgments and Agreements.**

(a) Borrower hereby acknowledges and agrees with Lender that:

(i) Lender has no fiduciary or advisory relationship with or duty to Borrower or the Insured arising out of or in connection with this Agreement or any other Loan Document, and the relationship between Lender, on the one hand, and Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor;

(ii) no joint venture is created by this Agreement or any other Loan Document or otherwise exists by virtue of the transactions contemplated hereby and thereby between or among Borrower, the Insured, any other Collateral Provider and Lender;

(iii) the obligations of the parties to this Agreement or any other Loan Document shall not be exclusive to any such party and will in no way limit or restrict Lender's other businesses, including, without limitation, assisting clients buying and

selling insurance products, identifying premium finance arrangements and providing other estate planning and financial advisory services;

(iv) any Advance made by Lender to Borrower under this Agreement is intended to be made or consummated for estate planning purposes and not for personal, family, consumer, household or agricultural purposes; and

(v) Lender has not provided and will not provide any advice or recommendation to Borrower, the Insured, any other Collateral Provider or any other Person with respect to or in connection with the Life Insurance Policy, any other Collateral, this Agreement or any other Loan Document or any transaction contemplated hereunder or thereunder, including but not limited to any advice or recommendation relating to estate or financial planning, or any tax, accounting or legal matters, and that each of Borrower, the Insured and any other Collateral Provider has been represented by its, his or her (as applicable) own competent counsel in connection with the foregoing.

(b) Borrower hereby further acknowledges and agrees with Lender that Lender may, and Borrower hereby authorizes and directs Lender to, (i) complete any omitted date or other information required or purported to be included in this Agreement or in any other Loan Document and (ii) correct any other defect, error or mistake that may be discovered herein or in any other Loan Document or in the execution or acknowledgment counterpart hereof or thereof.

*[This space left blank intentionally; signatures begin next page]*

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

**LENDER:**

**BANKDIRECT PREMIUM FUNDING, LLC,**  
a South Dakota limited liability company

By: Colin Danley  
Name: Colin Danley  
Title: SVP Business Development

**Address:**

150 N. Field Drive, Suite 190  
Lake Forest, Illinois 60045

Attention: Colin Danley  
Senior Vice President, Business  
Development

Telephone: (847) 295-4161

E-mail: [cdanley@bankdirectcapital.com](mailto:cdanley@bankdirectcapital.com)

**BORROWER:**

**The Era Boutique Hotel, LLC, a California**  
limited liability company

By: [Signature]  
Name: Gina Champion-Cain, The Trustee of  
The Gina Champion-Cain Revocable Trust UTD  
June 26, 2012

Title: Member of The Era Boutique Hotel, LLC

**Address:**

3515 Hancock St. Suite 200  
San Diego, CA 92110

Attention: The Gina Champion-Cain  
Revocable Trust UTD June 26, 2012

Telephone: (858) 270-9900

#053117

*Signature Page to Loan Agreement*

**SCHEDULE A**

**LIFE INSURANCE POLICY LIST**

The Era Boutique Hotel, LLC Loan Agreement dated August 20, 2018

<b>Name of Insurer</b>	<b>Face Amount of Life Insurance Policy</b>	<b>Policy Number</b>
Accordia Life and Annuity Company	\$10,000,000	UL00023042

#053117

Addendum to The Era Boutique Loan Agreement dated August 20, 2018.

Borrower hereby represents and acknowledges that the only asset owned by The Era Boutique Hotel, LLC is the Life Insurance Policy, and that the borrower is not indebted to any party aside from the Lender.

Upon execution, this Addendum will become a Loan Document.

The Era Boutique Hotel, LLC, a California  
limited liability company

By: 

Name: Gina Champion-Cain, The Trustee of  
The Gina Champion-Cain Revocable Trust UTD  
June 26, 2012

Title: Member of The Era Boutique Hotel, LLC

Address:

3515 Hancock St. Suite 200  
San Diego, CA 92110  
Attention: The Gina Champion-Cain  
Revocable Trust UTD June 26, 2012  
Telephone: (858) 270-9900

#053117

**EXHIBIT A****PROMISSORY NOTE**

\$3,250,000

**FOR VALUE RECEIVED**, on or before the Maturity Date, as defined in the hereinafter described Loan Agreement, the undersigned, The Gina Champion-Cain Revocable Trust UTD June 26, 2012, as Member (the "Member") of The Era Boutique Hotel, LLC, a limited liability company formed under the laws of California (the Member in such capacity, the "Maker"), promises to pay to the order of BankDirect Premium Funding, LLC, a South Dakota Limited Liability Company ("Payee"); Payee and any subsequent holder(s) hereof are sometimes herein referred to individually and collectively as "Holder"), the principal sum of Three Million, Two Hundred Fifty Thousand Dollars (\$3,250,000) or, if less, the aggregate unpaid principal amount of all Advances here against pursuant to that certain Loan Agreement dated August 20, 2018 by and between Payee and Maker (as the same heretofore may have been and/or hereafter may be amended, restated, supplemented, extended, renewed, replaced or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used but not defined herein shall have the meanings assigned thereto in the Loan Agreement), together with interest on the outstanding principal balance of the indebtedness evidenced hereby at the rate(s) specified in the Loan Agreement

This Note is the "Note" issued by Maker pursuant to the Loan Agreement, and the indebtedness evidenced by this Note is entitled to the benefits and security of the Loan Agreement and the other Loan Documents.

Principal and interest payable in respect of the indebtedness evidenced by this Note shall be due and payable at the times and in the manner specified in the Loan Agreement.

Holder hereby is authorized to record and endorse the date and principal amount of each Advance made by it, and the amount of each payment of principal and interest made to Holder with respect to the Loan, on a schedule annexed to and constituting a part of this Note, which recordation and endorsement shall constitute prima facie evidence of the Advances made by Holder to Maker and payments made by Maker to Holder in respect thereof, absent manifest error; provided, however, that (a) Holder's failure to make any such recordation or endorsement shall not in any way limit or otherwise affect the obligations of Maker or the rights and remedies of Holder under this Note or the Loan Agreement, and (b) payments to Holder of the principal of and interest on the Loan evidenced hereby shall not be affected by the failure to make any such recordation or endorsement. In lieu of making such recordation or endorsement, Holder hereby is authorized, at its option, to record the date and principal amount of each Advance made by it, and the amount of each payment of principal and interest made to such Holder with respect to the Loan, on its books and records in accordance with its usual and customary practice, which recordation shall constitute prima facie evidence of the Advances made by Holder to Maker and payments in respect of the Loan made by Maker to Holder, absent manifest error.

Upon the occurrence of an Event of Default, the entire outstanding principal balance of the indebtedness evidenced hereby, together with all accrued and unpaid interest thereon, may

#053117

B-1



be declared, and immediately shall become, due and payable in full, as provided in the Loan Agreement.

Presentment for payment, demand, protest and notice of demand, protest and nonpayment are hereby waived by Maker and all other parties hereto.

Anything in this Note, the Loan Agreement or any of the other Loan Documents to the contrary notwithstanding, in no event whatsoever, whether by reason of advancement of proceeds of the Loan, acceleration of the maturity of the unpaid balance of the Loan or otherwise, shall the interest and loan charges agreed to be paid to Holder for the use of the money advanced or to be advanced hereunder exceed the maximum amounts collectible under applicable laws in effect from time to time. It is understood and agreed by the parties that, if for any reason whatsoever the interest or loan charges paid or contracted to be paid by Maker in respect of the Obligations shall exceed the maximum amounts collectible under applicable laws in effect from time to time, then *ipso facto*, the obligation to pay such interest or loan charges shall be reduced to the maximum amounts collectible under applicable laws in effect from time to time, and any amounts collected by Holder that exceed such maximum amounts shall be applied to the reduction of the principal balance of the Loan or refunded to Borrower so that at no time shall the interest or loan charges paid or payable in respect of the indebtedness evidenced hereby exceed the maximum amounts permitted from time to time by applicable law.

This Note is intended as a contract under and shall be construed and enforceable in accordance with the laws of the State of New York, without reference to the conflicts or choice of law principles thereof, except to the extent that federal law may be applicable to determining the maximum amount of interest that may be charged by Holder in respect of the indebtedness evidenced hereby.

The undersigned Member is executing and delivering this Note, the Loan Agreement and the other Loan Documents to which it is a party solely in such Person's capacity as Member under the Operating Agreement of the Borrower, and not in such Person's individual capacity. In no case shall the undersigned Member be personally liable hereunder or thereunder for or on account of any of the statements, representation, warranties, covenants, indebtedness or obligations stated to be those of Maker hereunder or thereunder, and any such liability of such Person is and shall be limited to the assets of the Maker.

IN WITNESS WHEREOF, the undersigned Maker has caused this Note to be executed by its duly authorized officer as of the date first above written.

**MAKER:**

The Era Boutique Hotel, LLC, a California  
limited liability company

By: 

Name: Gina Champion-Cain, The Trustee of The  
Gina Champion-Cain Revocable Trust UTD June  
26, 2012

Title: Member of The Era Boutique Hotel, LLC

Address:

3515 Hancock St. Suite 200  
San Diego, CA 92110  
Attention: The Gina Champion-Cain  
Revocable Trust UTD June 26, 2012  
Telephone: (858) 270-9900

**EXHIBIT G**

**NOTICE OF BORROWING AND DISBURSEMENT INSTRUCTIONS**

August 24, 2018

To: **BANKDIRECT PREMIUM FUNDING, LLC**  
150 N. Field Drive, Suite 190  
Lake Forest, Illinois 60045  
Attention: Colin Danley  
Senior Vice President, Business Development  
Telephone: [REDACTED]  
E-mail: [REDACTED]

Ladies and Gentlemen:

Reference is hereby made to that certain Loan Agreement, dated as of August 24, 2018 (the "Loan Agreement"), between BANKDIRECT PREMIUM FUNDING, LLC, a South Dakota limited liability company (the "Lender"), and The Era Boutique Hotel, LLC, a limited liability company formed under the laws of that State of California (the "Borrower"). Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Loan Agreement.

Pursuant to Section 2.2 of the Loan Agreement, the undersigned Borrower hereby requests that the Lender make an Advance to the Borrower under the Loan Agreement in an aggregate principal amount equal to \$1,081,035.12 (the "Requested Advance") on August 24, 2018 (the "Proposed Funding Date"). In connection with this request, the undersigned Borrower hereby certifies as follows:

1. The proceeds of the Requested Advance proposed to be made on the Proposed Funding Date will be used solely:
  - (a) to pay the Premium Payment(s) necessary to maintain the Life Insurance Policy in force through the next succeeding Policy Anniversary Date (or another date as mutually agreed) without lapse or the commencement of any grace or notice period, and/or to repay, satisfy, and discharge fully an Existing Loan, in an aggregate amount equal to \$1,054,654.92; and
  - (b) to pay the Loan Origination Fee payable by the Borrower pursuant to Section 2.3 of the Loan Agreement in connection with the Requested Advance in an amount equal to \$26,380.20;
2. After giving effect to the Requested Advance proposed to be made on the Proposed Funding Date, the outstanding principal balance of the Loan (a) will equal \$1,081,035.12 and (b) will not exceed the Commitment Amount.
3. The Collateral Requirement will be satisfied on and as of the Proposed Funding Date after giving effect to the Requested Advance. The Collateral to be provided by the

Borrower and/or the Collateral Provider (as applicable) in satisfaction of the Collateral Requirement.

4. The representations and warranties of the Borrower contained in the Loan Agreement and in each other Loan Document to which the Borrower is a party are and will be true, complete and correct on and as of the Proposed Funding Date with the same effect as though made on and as of that date both before and after giving effect to the Requested Advance and to the application of the proceeds thereof, except to the extent that any such representation and warranty is expressly made as of a specified earlier date, in which event such representation and warranty was true and correct as of such earlier date.
5. The representations and warranties of the Insured contained in the Collateral Agreement and in each other Loan Document to which the Insured is a party are and will be true, complete and correct on and as of the Proposed Funding Date with the same effect as though made on and as of that date both before and after giving effect to the Requested Advance and to the application of the proceeds thereof, except to the extent that any such representation and warranty is expressly made as of a specified earlier date, in which event such representation and warranty was true and correct as of such earlier date.
6. No Default or Event of Default has occurred and is continuing or will result from the making of the Requested Advance or the application of the proceeds thereof.
7. This Notice of Borrowing and Disbursement Instructions is a Loan Document and the requested disbursements of funds set forth therein comply with all applicable requirements of the Loan Agreement.

The Borrower hereby irrevocably and unconditionally authorizes and directs the Lender to release and transfer the proceeds of the Requested Advance in accordance with the wire transfer instructions set forth on Schedule 1 attached hereto.

Delivery of an executed counterpart of this Notice of Borrowing and Disbursement Instructions by facsimile will be effective as delivery of an original executed counterpart of this Notice of Borrowing and Disbursement Instructions.

Very truly yours,

**The Era Boutique Hotel, LLC, a California  
limited liability company**

By: 

Name: Gina Champion-Cain, The Trustee of The  
Gina Champion-Cain Revocable Trust UTD June  
26, 2012

Title: Member of The Era Boutique Hotel, LLC

Address:

3515 Hancock St. Suite 200  
San Diego, CA 92110  
Attention: The Gina Champion-Cain  
Revocable Trust UTD June 26, 2012  
Telephone: (858) 270-9900

**SCHEDULE 1****Disbursement Instructions**

1.	Premium Payments - Lender transfers Requested Advance proceeds to account of Insurer specified below for the amount of the premium due and payable on the applicable Life Insurance Policy.	\$527,604.00
	ABA Number:	
	Bank Name:	
	Account Number:	
	Account Name:	
2.	Refinanced Loan Balance - Lender transfers Requested Advance proceeds to account of Insurer specified below for the amount of the premium due and payable on the applicable Life Insurance Policy.	**\$527,050.92
	ABA Number:	
	Bank Name:	Lake Forest Bank and Trust
	Account Number:	
	Account Name:	Wintrust Life Finance – Life Division
3.	Loan Transaction Fee - Lender transfers Requested Advance proceeds to account of Lender specified below in the amount of \$26,380.20	\$26,380.20
	ABA Number:	
	Bank Name:	
	Account Number:	
	Account Name:	

\*\* Note, additional per diem costs beyond August 24, 2018 will accrue in the amount of \$82.39 per day and will be added to the existing loan from the lender listed above.

**EXHIBIT B**

**COLLATERAL ASSIGNMENT OF LIFE INSURANCE**

This COLLATERAL ASSIGNMENT OF LIFE INSURANCE, dated as of August 20, 2018 (this "Assignment"), made by and between The Era Boutique Hotel, LLC, a limited liability company organized under the laws of the State of California (the "Policy Owner") and BANKDIRECT PREMIUM FUNDING, LLC, a South Dakota limited liability company and a subsidiary of Texas Capital Bank, N.A. (together with its successors and assigns, the "Assignee").

WHEREAS, pursuant to the Loan Agreement, dated as of August \_\_, 2018 (as amended, restated, supplemented and otherwise modified from time to time, the "Loan Agreement"), between the Policy Owner, as Borrower, and the Assignee, as Lender, the Assignee has agreed to make Advances to the Policy Owner from time to time subject to the terms and conditions specified therein;

WHEREAS, the Policy Owner is the sole direct legal and beneficial owner of the Life Insurance Policy (as defined below); and

WHEREAS, it is a condition precedent to the making of any Advances by the Assignee to the Policy Owner under the Loan Agreement that this Assignment be executed and delivered by the Policy Owner and the Assignee.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**SECTION 1. DEFINITIONS.** Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Loan Agreement.

**SECTION 2. ASSIGNMENT.** FOR VALUE RECEIVED, the Policy Owner hereby assigns, transfers, and pledges to the Assignee, and hereby grants a security interest to the Assignee, in and to all of the Policy Owner's claims, options, privileges, rights, title and interest in, to and under the life insurance policy(ies) described below:

**Life Insurance Policy No(s):** UL00023042

**Issued by:** Accordia Life and Annuity Company (the "Insurer")

**Insured:** Gina Champion-Cain

and any and all applications, riders, endorsements, supplements, amendments, renewals and all other documents that modify or otherwise affect the terms and conditions of such life insurance policy(ies) issued in connection therewith, and any and all death benefits and proceeds thereunder and thereof, in each case now owned or existing or at any time hereafter arising or acquired (such policy(ies), contracts, other documents and proceeds are hereinafter

#053117



referred to herein collectively as the "Life Insurance Policy"), including, without limitation, the following rights:

(a) The sole right to collect from the Insurer the net proceeds of the Life Insurance Policy payable upon the death of the Insured or maturity of the Life Insurance Policy;

(b) The sole right to withdraw from or surrender in whole or in part the Life Insurance Policy and receive the surrender value thereof at any time provided by the terms of the Life Insurance Policy and at such other times as the Insurer may allow;

(c) The sole right to obtain one or more loans or advances on the Life Insurance Policy at any time, either from the Insurer or from other persons, and to pledge or assign the Life Insurance Policy as security for such loans or advances;

(d) The sole right to collect and receive all distributions, shares of surplus, credited earnings, dividend deposits or additions to or other proceeds of the Life Insurance Policy now or hereafter made or apportioned thereto, and to exercise any and all rights and options contained in the Life Insurance Policy with respect thereto and to determine the amount of premium or other amount paid with respect to any term or provision of the Life Insurance Policy permitting any such right or option;

(e) The sole right to exercise all amendment, voting and non-forfeiture rights or privileges to the extent created or endowed by the Life Insurance Policy or allowed by the Insurer and the right to apply for and maintain waiver of premium or conversion of the Life Insurance Policy;

(f) The sole right to exercise any and all other rights under or with respect to the Life Insurance Policy or allowed by the Insurer and to receive all payments, benefits and advantages derived therefrom; and

(g) The sole right to do or cause to be done all things necessary, proper or advisable to keep and maintain the Life Insurance Policy in force.

**SECTION 3. RIGHTS RETAINED.** The following rights, so long as the Life Insurance Policy has not been surrendered or canceled, are reserved and excluded from this Assignment:

(a) The right to collect from the Insurer any disability benefit payable in cash that does not reduce the amount of insurance;

(b) The right to elect any optional mode of settlement permitted by the Life Insurance Policy or allowed by the Insurer; and

(c) The right to designate and change the beneficiary or beneficiaries of the Policy Owner with the prior written consent of the Assignee (such consent not to be unreasonably withheld).

provided, however, that the reservation of these rights shall in no way impair the right of the Assignee to surrender the Life Insurance Policy completely with all its incidents or impair any other right or interest of or assigned to the Assignee hereunder or under any other Loan Document, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this Assignment and to the rights of the Assignee hereunder and under the other Loan Documents.

**SECTION 4. OBLIGATIONS SECURED.** This Assignment shall secure, and the Life Insurance Policy is to be held as collateral security for, the payment and performance of all of the Obligations (as defined in the Loan Agreement) including, without limitation, the Policy Owner's obligations under the Promissory Note dated on or about the date hereof, made by the Policy Owner and payable to the order of the Assignee in the original principal amount of \$3,250,000, (the "Promissory Note"), and evidencing such additional loans that the Assignee may, in its sole discretion, make to the Policy Owner from time to time after the date hereof. The Obligations include, without limitation, any interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding. Subject to the terms of this Assignment, the Assignee may apply money received under the Life Insurance Policy to pay any of the Obligations when due in any order the Assignee may elect in its discretion.

**SECTION 5. BENEFITS PAYMENT DIRECTIVE.** The Insurer is hereby authorized and directed by the Policy Owner to pay the Assignee any and all death benefits, other periodic payments and any other amounts due or that became due and payable under or on account of the Life Insurance Policy, provided, however, that nothing herein shall entitle the Assignee to retain more than the amount of the Obligations due and payable to the Assignee.

**SECTION 6. RELEASE OF INFORMATION.** The Policy Owner hereby authorizes and directs the Insurer to release to the Assignee, and any of its agents, attorneys, representatives, servicers, designees, successors, assigns, transferees and participants, any and all forms, riders, amendments, endorsements, premium illustrations, verifications of coverage, analysis of cash value or other information concerning the Life Insurance Policy. The Policy Owner agrees that this authorization is valid for the maximum period permitted by Applicable Law, and that an executed photocopy or facsimile copy of this Assignment is as valid as the original.

**SECTION 7. REPRESENTATIONS.** The Policy Owner hereby represents and warrants to the Assignee that:

- (a) it is a duly organized and validly existing limited liability company in good standing under the laws of its state of formation;
- (b) the execution, delivery and performance by the Policy Owner of this Assignment (i) are within the Policy Owner's power, (ii) have been duly authorized by all necessary action, and (iii) do not contravene any provision of the Policy Owner's organizational documents, violate any law, rule or regulation applicable to the Policy Owner or its assets, or conflict with, violate, create a Lien or default under, or require a consent

#053117

under, the Life Insurance Policy or other document or agreement to which the Policy Owner is a party or by which it is bound;

(c) the Life Insurance Policy is in full force and effect;

(d) the Policy Owner is the sole direct legal and beneficial owner of the Life Insurance Policy and has full power and authority to assign the Life Insurance Policy to the Assignee;

(e) the Policy Owner has neither assigned, nor granted or incurred any Lien against, the Life Insurance Policy to any other person or entity, except for Liens securing the Obligations;

(f) this Assignment constitutes a legal, valid and binding obligation of the Policy Owner, enforceable against the Policy Owner in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally); and

(g) no proceedings in bankruptcy are pending or to its knowledge threatened against the Policy Owner (and that no grounds exist for such proceedings) and the Policy Owner's property is not subject to any assignment for the benefit of creditors.

**SECTION 8. COVENANTS.** The Policy Owner and the Assignee hereby covenant and agree as follows:

(a) Any balance of sums received hereunder by the Assignee from the Insurer remaining after payment of all of the Obligations, matured or unmatured, shall be paid in full by the Assignee to the persons or entities entitled thereto under the terms of the Life Insurance Policy as if this Assignment had not been executed;

(b) The Assignee shall not exercise either the right to surrender the Life Insurance Policy or the right to obtain policy loans from the Insurer unless and until there has been an Event of Default (as defined in the Loan Agreement) or a failure to pay any portion of the premium when due;

(c) Upon the Policy Owner's request, the Assignee shall forward, without unreasonable delay, to the Insurer, the Life Insurance Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement;

(d) The Insurer is hereby authorized and directed by the Policy Owner to recognize the Assignee's claims, rights and interests hereunder and under and in respect of the Life Insurance Policy and any rights, remedies and interests of the Assignee under any other Loan Document without investigating any of the foregoing, or any action taken by the Assignee in respect of any of the foregoing, or the validity or the amount of the Obligations or the existence of any Event of Default under the Loan Agreement, or the giving of any notice hereunder or under any Loan Document, under Applicable Law or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee; (ii) the sole signature of the Assignee shall be sufficient for the exercise of any rights or interests

#053117

under the Life Insurance Policy assigned hereby and the sole receipt by the Assignee of any sums from the Insurer payable under the Life Insurance Policy and assigned shall be a full discharge and release therefore to the Insurer to the extent of such sums so received; and (iii) checks for all or any part of the sums payable under the Life Insurance Policy and assigned herein shall be paid by the Insurer to the exclusive order of the Assignee if, when, and in such amounts as may be requested by the Assignee;

(e) The Policy Owner shall at no time change the mode of premium payment or otherwise modify the timing of any such premium payments from the signed policy illustration provided to the Assignee with respect to the Life Insurance Policy without the prior written consent of the Assignee. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Life Insurance Policy, whether or not obtained by the Assignee, or any other charges on the Life Insurance Policy, provided that any such amounts so paid by the Assignee from its own funds shall become a part of the Obligations hereby secured, shall be due and payable immediately, and shall accrue interest at the highest rate set forth in the Promissory Note; and

The exercise of any right, ~~remedy, interest, option, privilege or power given~~ to the Assignee under this Assignment shall be at the sole option and discretion of the Assignee, and the Assignee may exercise any such right, remedy, interest, option, privilege or power without notice to, or assent by, or affecting the liability of, or releasing any interest hereby assigned by, the Policy Owner.

**SECTION 9. TERMINATION.** At such time as the Obligations have been paid and performed in full, the Assignee will promptly terminate this Assignment and the Liens granted hereunder, and will promptly terminate any UCC-1 financing statements filed in connection with this Assignment.

**SECTION 10. LIMITED POWER OF ATTORNEY.**

(a) The Policy Owner hereby irrevocably and unconditionally constitutes and appoints the Assignee and any officer, agent or servicer thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Policy Owner and in the name of the Policy Owner or in its own name or otherwise, from time to time in the Assignee's discretion, for the purpose of carrying out the terms of this Assignment, to take any and all appropriate action and to execute and deliver any and all documents and instruments which the Assignee may deem necessary or desirable to accomplish the intent and purposes of this Assignment and to effect any right or interest assigned to the Assignee under this Assignment; provided, however, that nothing in this Assignment shall obligate the Assignee to protect the rights or interests of the Policy Owner or any other person or entity in or under the Life Insurance Policy or to take any other action with respect to the Life Insurance Policy. The power of attorney set forth in this Section 10 is irrevocable and coupled with an interest. The powers conferred on the Assignee pursuant to this Section 10 are solely to protect the Assignee's rights and interests in the Life Insurance Policy and shall not impose any duty upon the Assignee to exercise any such powers.

(b) The Assignee's sole duty with respect to the Life Insurance Policy shall be to use reasonable care in the custody and preservation of any documents or instruments in the Assignee's possession evidencing the Life Insurance Policy in the same manner as the Assignee deals with similar property for its own account. The Assignee shall not be responsible to the Policy Owner except for the Assignee's own gross negligence or willful misconduct.

**SECTION 11. NO WAIVER.** The Assignee shall not by any act (except by a written instrument pursuant to Section 15), delay, indulgence, omission or otherwise be deemed to have waived any right, remedy or power hereunder. No failure to exercise, nor any delay in exercising, on the part of the Assignee, any right, remedy, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by the Assignee of any right, remedy or power hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Assignee would otherwise have on any future occasion. The rights, remedies and powers herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights, remedies and powers provided by law.

**SECTION 12. ASSIGNMENT ABSOLUTE.** All rights and interests of the Assignee hereunder, the collateral assignment of and grant of a security interest in the Life Insurance Policy and all obligations of the Policy Owner hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Loan Agreement, any other Loan Document, any other agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Loan Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on any other Collateral, or any release or amendment or waiver of or consent under or departure from any Collateral, securing all or any of the Obligations, or (d) any other event or circumstance that might otherwise constitute a defense available to, or a discharge of, the Policy Owner or any other Person in respect of the Obligations or this Assignment or any other Loan Document.

**SECTION 13. JOINT AND SEVERAL LIABILITY.** If more than one individual or entity signs this Assignment as the Policy Owner, the obligations, agreements, covenants, representations and warranties of all such persons or entities signing this Assignment as the Policy Owners shall be joint and several.

**SECTION 14. SUCCESSORS AND ASSIGNS.** All of the terms and provisions of this Assignment shall be binding upon, and inure to the benefit of, and be enforceable by, the respective successors, executors, administrators and assigns of the parties hereto; provided that the Policy Owner may not assign, transfer or delegate any of its rights or obligations under this Assignment to any other Person without the prior written consent of the Assignee. Any assignment, transfer or delegation in violation of this Section 14 shall be null and void.

#053117



**SECTION 15. AMENDMENTS.** No provision of this Assignment shall be amended, modified or waived except by a written agreement signed by the Policy Owner and the Assignee.

**SECTION 16. ENTIRE AGREEMENT.** This Assignment represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings between or among such parties with respect to such subject matter; it may not be altered or amended except by subsequent written agreement duly executed by all of the parties.

**SECTION 17. NOTICES.** Unless notice is required by Applicable Law to be given in another manner, all notices and other communications provided for hereunder shall be in writing (including telecopier and/or e-mail) and mailed, telecopied, e-mailed, couriered or delivered to: the Policy Owner or to the Assignee, as the case may be, in each case addressed and delivered to such party at its address set forth below, or, as to either party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 17, and all such notices and other communications shall, when mailed, delivered by facsimile, e-mail, couriered, or hand delivered, respectively, be effective when received by such party.

If to the Policy Owner:

The Era Boutique Hotel, LLC  
c/o The Gina Champion-Cain Revocable Trust UTD June 26, 2012  
3515 Hancock St. Suite 200  
San Diego, CA 92110  
Attention: The Gina Champion-Cain Revocable Trust UTD June 26,  
2012  
Telephone: (858) 270-9900  
E-mail: Cris@Americannationalinvestments.com

If to the Assignee:

BankDirect Premium Funding, LLC  
150 N. Field Drive, Suite 190  
Lake Forest, Illinois 60045  
Attention: Colin Danley  
Senior Vice President, Business Development  
Telephone: (847) 295-4161  
E-mail: cdanley@bankdirectcapital.com

The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any person (other than the Policy Owner or the Assignee) designated on the signature pages hereto to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

#053117



IN WITNESS WHEREOF, the undersigned have caused this Collateral Assignment of Life Insurance to be duly executed as of this 22<sup>nd</sup> day of August, 2018

**POLICY OWNER:**

The Era Boutique Hotel, LLC, a California limited liability company

By: 

Name: Gina Champion-Cain, The Trustee of The Gina Champion-Cain Revocable Trust UTD June 26, 2012

Title: Member of The Era Boutique Hotel, LLC

**Address:**

3515 Hancock St. Suite 200

San Diego, CA 92110

Attention: The Gina Champion-Cain Revocable Trust UTD June 26, 2012

Telephone: (858) 270-9900

Acknowledged and agreed as of the date written above:

**ASSIGNEE:**

BANKDIRECT PREMIUM FUNDING, LLC

By: 

Name: Colin Danley

Title: SVP, Business Development

Accepted and acknowledged as of \_\_\_\_\_

Accordia Life and Annuity Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#053117

*Signature Page to Collateral Assignment of Life Insurance*



October 2, 2018

BankDirect Premium Funding, LLC  
150 N. Field Drive #190  
Lake Forest, IL 60045

Re: Policy: UL00023042  
Policy Owner: The Era Boutique Hotel, LLC  
Insured: Gina Champion-Cain

Dear Sir or Madam,

We have received the attached collateral assignment on the above referenced policy to BankDirect Premium Funding, LLC. This letter is to confirm that the assignment has been recorded by Accordia Life and Annuity Company and our files updated.

In addition, we confirm that Accordia Life and Annuity has released a previous assignment on the policy with FIRST Insurance Funding Corp. of California. BankDirect Premium Funding, LLC will be sole interest on the policy.

If you have any questions or need additional assistance, please do not hesitate to contact us at our toll free number shown above.

Sincerely,



Jeff Lynch  
Vice President, New Business  
Individual Administration

**EXHIBIT B**

**COLLATERAL ASSIGNMENT OF LIFE INSURANCE**

This COLLATERAL ASSIGNMENT OF LIFE INSURANCE, dated as of August 20, 2018 (this "Assignment"), made by and between The Era Boutique Hotel, LLC, a limited liability company organized under the laws of the State of California (the "Policy Owner") and BANKDIRECT PREMIUM FUNDING, LLC, a South Dakota limited liability company and a subsidiary of Texas Capital Bank, N.A. (together with its successors and assigns, the "Assignee").

WHEREAS, pursuant to the Loan Agreement, dated as of August \_\_, 2018 (as amended, restated, supplemented and otherwise modified from time to time, the "Loan Agreement"), between the Policy Owner, as Borrower, and the Assignee, as Lender, the Assignee has agreed to make Advances to the Policy Owner from time to time subject to the terms and conditions specified therein;

WHEREAS, the Policy Owner is the sole direct legal and beneficial owner of the Life Insurance Policy (as defined below); and

WHEREAS, it is a condition precedent to the making of any Advances by the Assignee to the Policy Owner under the Loan Agreement that this Assignment be executed and delivered by the Policy Owner and the Assignee.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**SECTION 1. DEFINITIONS.** Capitalized terms used but not otherwise defined herein shall have the meanings specified in the Loan Agreement.

**SECTION 2. ASSIGNMENT. FOR VALUE RECEIVED,** the Policy Owner hereby assigns, transfers, and pledges to the Assignee, and hereby grants a security interest to the Assignee, in and to all of the Policy Owner's claims, options, privileges, rights, title and interest in, to and under the life insurance policy(ies) described below:

**Life Insurance Policy No(s):** UL00023042

**Issued by:** Accordia Life and Annuity Company (the "Insurer")

**Insured:** Gina Champion-Cain

and any and all applications, riders, endorsements, supplements, amendments, renewals and all other documents that modify or otherwise affect the terms and conditions of such life insurance policy(ies) issued in connection therewith, and any and all death benefits and proceeds thereunder and thereof, in each case now owned or existing or at any time hereafter arising or acquired (such policy(ies), contracts, other documents and proceeds are hereinafter

referred to herein collectively as the "Life Insurance Policy", including, without limitation, the following rights:

- (a) The sole right to collect from the Insurer the net proceeds of the Life Insurance Policy payable upon the death of the Insured or maturity of the Life Insurance Policy;
- (b) The sole right to withdraw from or surrender in whole or in part the Life Insurance Policy and receive the surrender value thereof at any time provided by the terms of the Life Insurance Policy and at such other times as the Insurer may allow;
- (c) The sole right to obtain one or more loans or advances on the Life Insurance Policy at any time, either from the Insurer or from other persons, and to pledge or assign the Life Insurance Policy as security for such loans or advances;
- (d) The sole right to collect and receive all distributions, shares of surplus, credited earnings, dividend deposits or additions to or other proceeds of the Life Insurance Policy now or hereafter made or apportioned thereto, and to exercise any and all rights and options contained in the Life Insurance Policy with respect thereto and to determine the amount of premium or other amount paid with respect to any term or provision of the Life Insurance Policy permitting any such right or option;
- (e) The sole right to exercise all amendment, voting and non-forfeiture rights or privileges to the extent created or endowed by the Life Insurance Policy or allowed by the Insurer and the right to apply for and maintain waiver of premium or conversion of the Life Insurance Policy;
- (f) The sole right to exercise any and all other rights under or with respect to the Life Insurance Policy or allowed by the Insurer and to receive all payments, benefits and advantages derived therefrom; and
- (g) The sole right to do or cause to be done all things necessary, proper or advisable to keep and maintain the Life Insurance Policy in force.

**SECTION 3. RIGHTS RETAINED.** The following rights, so long as the Life Insurance Policy has not been surrendered or canceled, are reserved and excluded from this Assignment:

- (a) The right to collect from the Insurer any disability benefit payable in cash that does not reduce the amount of insurance;
- (b) The right to elect any optional mode of settlement permitted by the Life Insurance Policy or allowed by the Insurer; and
- (c) The right to designate and change the beneficiary or beneficiaries of the Policy Owner with the prior written consent of the Assignee (such consent not to be unreasonably withheld).

provided, however, that the reservation of these rights shall in no way impair the right of the Assignee to surrender the Life Insurance Policy completely with all its incidents or impair any other right or interest of or assigned to the Assignee hereunder or under any other Loan Document, and any designation or change of beneficiary or election of a mode of settlement shall be made subject to this Assignment and to the rights of the Assignee hereunder and under the other Loan Documents.

**SECTION 4. OBLIGATIONS SECURED.** This Assignment shall secure, and the Life Insurance Policy is to be held as collateral security for, the payment and performance of all of the Obligations (as defined in the Loan Agreement) including, without limitation, the Policy Owner's obligations under the Promissory Note dated on or about the date hereof, made by the Policy Owner and payable to the order of the Assignee in the original principal amount of \$3,250,000, (the "Promissory Note"), and evidencing such additional loans that the Assignee may, in its sole discretion, make to the Policy Owner from time to time after the date hereof. The Obligations include, without limitation, any interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding. Subject to the terms of this Assignment, the Assignee may apply money received under the Life Insurance Policy to pay any of the Obligations when due in any order the Assignee may elect in its discretion.

**SECTION 5. BENEFITS PAYMENT DIRECTIVE.** The Insurer is hereby authorized and directed by the Policy Owner to pay the Assignee any and all death benefits, other periodic payments and any other amounts due or that became due and payable under or on account of the Life Insurance Policy, provided, however, that nothing herein shall entitle the Assignee to retain more than the amount of the Obligations due and payable to the Assignee.

**SECTION 6. RELEASE OF INFORMATION.** The Policy Owner hereby authorizes and directs the Insurer to release to the Assignee, and any of its agents, attorneys, representatives, servicers, designees, successors, assigns, transferees and participants, any and all forms, riders, amendments, endorsements, premium illustrations, verifications of coverage, analysis of cash value or other information concerning the Life Insurance Policy. The Policy Owner agrees that this authorization is valid for the maximum period permitted by Applicable Law, and that an executed photocopy or facsimile copy of this Assignment is as valid as the original.

**SECTION 7. REPRESENTATIONS.** The Policy Owner hereby represents and warrants to the Assignee that:

(a) it is a duly organized and validly existing limited liability company in good standing under the laws of its state of formation;

(b) the execution, delivery and performance by the Policy Owner of this Assignment (i) are within the Policy Owner's power, (ii) have been duly authorized by all necessary action, and (iii) do not contravene any provision of the Policy Owner's organizational documents, violate any law, rule or regulation applicable to the Policy Owner or its assets, or conflict with, violate, create a Lien or default under, or require a consent

under, the Life Insurance Policy or other document or agreement to which the Policy Owner is a party or by which it is bound;

(c) the Life Insurance Policy is in full force and effect;

(d) the Policy Owner is the sole direct legal and beneficial owner of the Life Insurance Policy and has full power and authority to assign the Life Insurance Policy to the Assignee;

(e) the Policy Owner has neither assigned, nor granted or incurred any Lien against, the Life Insurance Policy to any other person or entity, except for Liens securing the Obligations;

(f) this Assignment constitutes a legal, valid and binding obligation of the Policy Owner, enforceable against the Policy Owner in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally); and

(g) no proceedings in bankruptcy are pending or to its knowledge threatened against the Policy Owner (and that no grounds exist for such proceedings) and the Policy Owner's property is not subject to any assignment for the benefit of creditors.

**SECTION 8. COVENANTS.** The Policy Owner and the Assignee hereby covenant and agree as follows:

(a) Any balance of sums received hereunder by the Assignee from the Insurer remaining after payment of all of the Obligations, matured or unmatured, shall be paid in full by the Assignee to the persons or entities entitled thereto under the terms of the Life Insurance Policy as if this Assignment had not been executed;

(b) The Assignee shall not exercise either the right to surrender the Life Insurance Policy or the right to obtain policy loans from the Insurer unless and until there has been an Event of Default (as defined in the Loan Agreement) or a failure to pay any portion of the premium when due;

(c) Upon the Policy Owner's request, the Assignee shall forward, without unreasonable delay, to the Insurer, the Life Insurance Policy for endorsement of any designation or change of beneficiary or any election of an optional mode of settlement;

(d) The Insurer is hereby authorized and directed by the Policy Owner to recognize the Assignee's claims, rights and interests hereunder and under and in respect of the Life Insurance Policy and any rights, remedies and interests of the Assignee under any other Loan Document without investigating any of the foregoing, or any action taken by the Assignee in respect of any of the foregoing, or the validity or the amount of the Obligations or the existence of any Event of Default under the Loan Agreement, or the giving of any notice hereunder or under any Loan Document, under Applicable Law or otherwise, or the application to be made by the Assignee of any amounts to be paid to the Assignee; (ii) the sole signature of the Assignee shall be sufficient for the exercise of any rights or interests

#053117



under the Life Insurance Policy assigned hereby and the sole receipt by the Assignee of any sums from the Insurer payable under the Life Insurance Policy and assigned shall be a full discharge and release therefore to the Insurer to the extent of such sums so received; and (iii) checks for all or any part of the sums payable under the Life Insurance Policy and assigned herein shall be paid by the Insurer to the exclusive order of the Assignee if, when, and in such amounts as may be requested by the Assignee;

(e) The Policy Owner shall at no time change the mode of premium payment or otherwise modify the timing of any such premium payments from the signed policy illustration provided to the Assignee with respect to the Life Insurance Policy without the prior written consent of the Assignee. The Assignee shall be under no obligation to pay any premium, or the principal of or interest on any loans or advances on the Life Insurance Policy, whether or not obtained by the Assignee, or any other charges on the Life Insurance Policy, provided that any such amounts so paid by the Assignee from its own funds shall become a part of the Obligations hereby secured, shall be due and payable immediately, and shall accrue interest at the highest rate set forth in the Promissory Note; and

The exercise of any right, ~~remedy, interest, option, privilege or power~~ to the Assignee under this Assignment shall be at the sole option and discretion of the Assignee, and the Assignee may exercise any such right, remedy, interest, option, privilege or power without notice to, or assent by, or affecting the liability of, or releasing any interest hereby assigned by, the Policy Owner.

**SECTION 9. TERMINATION.** At such time as the Obligations have been paid and performed in full, the Assignee will promptly terminate this Assignment and the Liens granted hereunder, and will promptly terminate any UCC-1 financing statements filed in connection with this Assignment.

**SECTION 10. LIMITED POWER OF ATTORNEY.**

(a) The Policy Owner hereby irrevocably and unconditionally constitutes and appoints the Assignee and any officer, agent or servicer thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Policy Owner and in the name of the Policy Owner or in its own name or otherwise, from time to time in the Assignee's discretion, for the purpose of carrying out the terms of this Assignment, to take any and all appropriate action and to execute and deliver any and all documents and instruments which the Assignee may deem necessary or desirable to accomplish the intent and purposes of this Assignment and to effect any right or interest assigned to the Assignee under this Assignment; provided, however, that nothing in this Assignment shall obligate the Assignee to protect the rights or interests of the Policy Owner or any other person or entity in or under the Life Insurance Policy or to take any other action with respect to the Life Insurance Policy. The power of attorney set forth in this Section 10 is irrevocable and coupled with an interest. The powers conferred on the Assignee pursuant to this Section 10 are solely to protect the Assignee's rights and interests in the Life Insurance Policy and shall not impose any duty upon the Assignee to exercise any such powers.

(b) The Assignee's sole duty with respect to the Life Insurance Policy shall be to use reasonable care in the custody and preservation of any documents or instruments in the Assignee's possession evidencing the Life Insurance Policy in the same manner as the Assignee deals with similar property for its own account. The Assignee shall not be responsible to the Policy Owner except for the Assignee's own gross negligence or willful misconduct.

**SECTION 11. NO WAIVER.** The Assignee shall not by any act (except by a written instrument pursuant to Section 15), delay, indulgence, omission or otherwise be deemed to have waived any right, remedy or power hereunder. No failure to exercise, nor any delay in exercising, on the part of the Assignee, any right, remedy, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. A waiver by the Assignee of any right, remedy or power hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Assignee would otherwise have on any future occasion. The rights, remedies and powers herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights, remedies and powers provided by law.

**SECTION 12. ASSIGNMENT ABSOLUTE.** All rights and interests of the Assignee hereunder, the collateral assignment of and grant of a security interest in the Life Insurance Policy and all obligations of the Policy Owner hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Loan Agreement, any other Loan Document, any other agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Loan Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on any other Collateral, or any release or amendment or waiver of or consent under or departure from any Collateral, securing all or any of the Obligations, or (d) any other event or circumstance that might otherwise constitute a defense available to, or a discharge of, the Policy Owner or any other Person in respect of the Obligations or this Assignment or any other Loan Document.

**SECTION 13. JOINT AND SEVERAL LIABILITY.** If more than one individual or entity signs this Assignment as the Policy Owner, the obligations, agreements, covenants, representations and warranties of all such persons or entities signing this Assignment as the Policy Owners shall be joint and several.

**SECTION 14. SUCCESSORS AND ASSIGNS.** All of the terms and provisions of this Assignment shall be binding upon, and inure to the benefit of, and be enforceable by, the respective successors, executors, administrators and assigns of the parties hereto; provided that the Policy Owner may not assign, transfer or delegate any of its rights or obligations under this Assignment to any other Person without the prior written consent of the Assignee. Any assignment, transfer or delegation in violation of this Section 14 shall be null and void.

#053117

**SECTION 15. AMENDMENTS.** No provision of this Assignment shall be amended, modified or waived except by a written agreement signed by the Policy Owner and the Assignee.

**SECTION 16. ENTIRE AGREEMENT.** This Assignment represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings between or among such parties with respect to such subject matter; it may not be altered or amended except by subsequent written agreement duly executed by all of the parties.

**SECTION 17. NOTICES.** Unless notice is required by Applicable Law to be given in another manner, all notices and other communications provided for hereunder shall be in writing (including telecopier and/or e-mail) and mailed, telecopied, e-mailed, couriered or delivered to: the Policy Owner or to the Assignee, as the case may be, in each case addressed and delivered to such party at its address set forth below, or, as to either party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 17, and all such notices and other communications shall, when mailed, delivered by facsimile, e-mail, couriered, or hand delivered, respectively, be effective when received by such party.

If to the Policy Owner:

The Era Boutique Hotel, LLC  
c/o The Gina Champion-Cain Revocable Trust UTD June 26, 2012  
3515 Hancock St. Suite 200  
San Diego, CA 92110  
Attention: The Gina Champion-Cain Revocable Trust UTD June 26,  
2012  
Telephone: (858) 270-9900  
E-mail: Cris@Americannationalinvestments.com

If to the Assignee:

BankDirect Premium Funding, LLC  
150 N. Field Drive, Suite 190  
Lake Forest, Illinois 60045  
Attention: Colin Danley  
Senior Vice President, Business Development  
Telephone: (847) 295-4161  
E-mail: cdanley@bankdirectcapital.com

The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any person (other than the Policy Owner or the Assignee) designated on the signature pages hereto to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

#053117

IN WITNESS WHEREOF, the undersigned have caused this Collateral Assignment of Life Insurance to be duly executed as of this 22<sup>nd</sup> day of August, 2018

**POLICY OWNER:**

The Era Boutique Hotel, LLC, a California limited liability company

By: 

Name: Gina Champion-Cain, The Trustee of The Gina Champion-Cain Revocable Trust UTD June 26, 2012

Title: Member of The Era Boutique Hotel, LLC

**Address:**

3515 Hancock St. Suite 200

San Diego, CA 92110

Attention: The Gina Champion-Cain Revocable Trust UTD June 26, 2012

Telephone: (858) 270-9900

Acknowledged and agreed as of the date written above:

**ASSIGNEE:**

BANKDIRECT PREMIUM FUNDING, LLC

By: 

Name: Colin Danley

Title: SVP, Business Development

Accepted and acknowledged as of \_\_\_\_\_

Accordia Life and Annuity Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#053117

*Signature Page to Collateral Assignment of Life Insurance*

**EXHIBIT C**

**COLLATERAL AGREEMENT**

**between**

**GINA CHAMPION-CAIN  
as the Pledgor**

**and**

**BANKDIRECT PREMIUM FUNDING, LLC  
as the Lender**

**Dated as of August 20, 2018**

## TABLE OF CONTENTS

	Page
ARTICLE I     DEFINITIONS AND TERMS.....	1
Section 1.1     Definitions.....	1
Section 1.2     UCC Defined Terms .....	4
Section 1.3     Other Defined Terms .....	4
Section 1.4     Incorporation by Reference.....	4
ARTICLE II     COLLATERAL .....	5
Section 2.1     Collateral Requirements.....	5
Section 2.2     Pledge and Grant of Security Interest .....	5
Section 2.3     Adjustments to Collateral .....	5
Section 2.4     Additional Provisions.....	6
Section 2.5     Letter of Credit Default.....	7
Section 2.6     Lien Perfection and Priority; Further Assurances.....	8
Section 2.7     Security for Secured Obligations .....	9
ARTICLE III     REPRESENTATIONS AND WARRANTIES.....	9
Section 3.1     Representations and Warranties of Pledgor.....	9
ARTICLE IV     COVENANTS .....	11
Section 4.1     Collateral.....	11
Section 4.2     Payment of Obligations.....	12
Section 4.3     Notice of Certain Events.....	12
Section 4.4     Change of Name or Address .....	12
Section 4.5     Further Assurances.....	12
ARTICLE V     EVENTS OF DEFAULT.....	12
Section 5.1     Eligible Assets Collateral.....	12
Section 5.2     Letters of Credit.....	13
Section 5.3     Power of Attorney.....	13
Section 5.4     Rights and Remedies Upon Event of Default .....	14
Section 5.5     Performance of Pledgor Obligations.....	16
Section 5.6     Lender Obligations.....	16
ARTICLE VI     MISCELLANEOUS .....	16
Section 6.1     Notices .....	16



**TABLE OF CONTENTS**  
(continued)

		<b>Page</b>
Section 6.2	Amendments .....	16
Section 6.3	Binding Effect; Assignments .....	17
Section 6.4	Acknowledgments.....	17
Section 6.5	Security Interest Absolute.....	17
Section 6.6	Survival .....	18
Section 6.7	No Waiver; Remedies Cumulative .....	18
Section 6.8	Severability .....	18
Section 6.9	Counterparts .....	18
Section 6.10	Independence of Covenants .....	18
Section 6.11	GOVERNING LAW.....	19
Section 6.12	WAIVER OF JURY TRIAL.....	19
Section 6.13	Consent to Jurisdiction.....	19
Section 6.14	Costs and Expenses .....	19
Section 6.15	Indemnification.....	19
Section 6.16	Limitation of Liability.....	21
Section 6.17	Entire Agreement.....	21

**Schedules and Exhibits**

Schedule A	Collateral Account and Collateral Intermediary
Schedule B	Eligible Securities and Valuation Percentages
Schedule C	Market Value

Exhibit A	Form of Letter of Credit
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**THIS COLLATERAL AGREEMENT** dated as of August 20, 2018 (this "Agreement"), made by and between Gina Champion-Cain, an individual residing at 4014 Bandini St., San Diego, CA 92103, as the Pledgor (the "Pledgor") and BANKDIRECT PREMIUM FUNDING, LLC, a South Dakota limited liability company and a subsidiary of Texas Capital Bank, N.A., a national banking association organized under the laws of the United States of America, as the Lender (the "Lender").

WITNESSETH:

WHEREAS, pursuant to that certain Loan Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), between The Era Boutique Hotel, LLC, as the Borrower (the "Borrower"), and the Lender, the Lender desires to make Advances (as defined in the Loan Agreement) to the Borrower from time to time to finance the payment of premiums on the Life Insurance Policy (as defined in the Loan Agreement);

WHEREAS, the Pledgor desires that the Lender make Advances to the Borrower under the Loan Agreement;

WHEREAS, in order to induce the Lender to enter into the Loan Agreement and the other Loan Documents, the Pledgor has agreed to pledge and/or deliver Collateral (as hereinafter defined) to the Lender from time to time to secure the payment and performance of the Obligations (as defined in the Loan Agreement); and

WHEREAS, it is a condition precedent to the making of certain Advances by the Lender to the Borrower under the Loan Agreement that the Pledgor enter into this Agreement with the Lender.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce the Lender to enter into the Loan Agreement and the other Loan Documents and to make Advances to the Borrower under the Loan Agreement, the Pledgor hereby covenants and agrees with the Lender as follows:

ARTICLE I

DEFINITIONS AND TERMS

Section 1.1 Definitions.

(a) As used in this Agreement, the following terms shall have the meanings specified below (such meanings being equally applicable to both the singular and plural forms of the terms defined):

"Borrower" has the meaning specified in the recitals to this Agreement.

"Collateral" has the meaning set forth in Section 2.2.

"Collateral Account" means that certain account specified in Schedule A hereto, established and maintained by the Pledgor with the Collateral Intermediary in which any Collateral is held and maintained from time to time, and which is subject to a Control Agreement.

"Collateral Account Statement" has the meaning specified in Section 2.3(a).

"Collateral Deposit Date" has the meaning specified in Section 2.3(c).

"Collateral Intermediary" means that certain bank or other financial institution specified on Schedule A hereto.

"Collateral Notice" has the meaning set forth in Section 2.3(c).

"Collateral Valuation Date" means the Business Day immediately preceding the Initial Loan Funding Date, the last Business Day of each calendar month following the Initial Loan Funding Date, the Business Day immediately preceding each other Funding Date, each Letter of Credit Cure Date, and any other Business Day selected by the Lender in its sole discretion.

"Collateral Value" means, on any date of determination, an amount equal to the sum of (a) the Guaranteed Cash Surrender Value of the Life Insurance Policy on such date, as determined by the Lender, plus (b) the aggregate Market Value of all Collateral pledged and/or delivered to the Lender hereunder on such date, as determined by the Lender.

September 5, 2018

"Control Agreement" means the Collateral Account Control Agreement, or another similar agreement, dated as of N/A at Loan Closing among the Pledgor, the Lender and the Collateral Intermediary, in form and substance satisfactory to the Lender, providing for the Lender's control (as defined in the UCC) of the Collateral Account and the Collateral held and maintained therein from time to time.

"Credit Rating" means, with respect to any proposed Letter of Credit Issuer on any date of determination, the respective rating then assigned to its unsecured senior long-term debt (not supported by third party credit enhancements) by S&P or Moody's on such date.

"Cut-Off Time" means 4:00 P.M., New York City Time.

"Eligible Assets" has the meaning defined in the Loan Agreement.

"Eligible Assets Collateral" means, on any date, all Eligible Assets of the Pledgor which are pledged to the Lender pursuant to this Agreement and are subject to the Control Agreement on such date.

"Eligible Collateral" means, on any date of determination, all Eligible Assets Collateral on such date, as determined by the Lender, and all Eligible Letters of Credit on such date, as determined by the Lender.

"Eligible Letter of Credit" means, on any date of determination, any Letter of Credit which is issued by a Letter of Credit Issuer to and in the possession of the Lender as beneficiary

thereof on such date and with respect to which no Letter of Credit Default has occurred and is continuing on such date.

“Eligible Security” means any debt security or any equity security owned by the Pledgor which is of a type described on Schedule A hereto.

“Excess Collateral” has the meaning specified in Section 2.3(d).

“Indemnification Event” has the meaning specified in Section 6.15.

“Indemnified Amounts” has the meaning specified in Section 6.15.

“Indemnitee” has the meaning specified in Section 6.15.

“ISP98” means the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, as the same may be amended from time to time.

“Lender Expenses” means any and all (a) reasonable fees, costs and expenses (including, without limitation, reasonable attorneys’ fees) paid or incurred by the Lender from time to time under, from, as a result of or in connection with (i) the negotiation of this Agreement, the Control Agreement, or any Letter of Credit or any term or provision thereof, (ii) the preparation, negotiation, execution and delivery of any amendment, modification or supplement to, or any restructuring or waiver of, this Agreement or the Control Agreement, or any Letter of Credit or any term or provision thereof, and (iii) the approval, perfection, priority, issuance, delivery, renewal, administration, or presentation by Lender of any Collateral, and (b) fees, costs and expenses (including, without limitation, attorneys’ fees) paid or incurred by the Lender from time to time under, from, as a result of or in connection with the collection or enforcement of the obligations of the Pledgor under, or the exercise or enforcement of any other rights or remedies of the Lender under or with respect to, this Agreement, the Control Agreement, any Letter of Credit or any other Collateral.

“Lender Party” has the meaning specified in Section 5.6.

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, substantially in the form attached hereto as Exhibit A or otherwise in form and substance satisfactory to the Lender in its sole discretion, issued by a Letter of Credit Issuer for the account of the Pledgor and for the benefit of the Lender as beneficiary, as credit support for the purpose of satisfying the Pledgor’s obligations to the Lender under Section 2.1.

“Letter of Credit Cure Date” has the meaning set forth in Section 2.5(b) of this Agreement.

“Letter of Credit Default” has the meaning set forth in Section 2.5 of this Agreement.

“Letter of Credit Issuer” means (a) any U.S. commercial bank or any western European Bank with U.S. branch office which has assets of at least \$4,000,000,000 and has a Credit Rating of at least A- issued by S&P and A3 issued by Moody’s or (b) any other financial institution satisfactory to the Lender in its sole discretion.

"Loan Agreement" has the meaning specified in the recitals to this Agreement.

"Market Value" means (a) with respect to any Collateral constituting cash or any instrument, 100% of the U.S. dollar value thereof; (b) with respect to any Collateral constituting any Letter of Credit, (i) if no Letter of Credit Default with respect to such Letter of Credit is continuing, the stated face amount of the undrawn portion of such Letter of Credit, or (ii) at any time during which a Letter of Credit Default is continuing with respect to such Letter of Credit, zero; and (c) with respect to any Collateral constituting any Eligible Security, the Market Value of such Eligible Security on such date, as determined by the Lender by reference to Schedule C hereto, multiplied by the Valuation Percentage for such Eligible Security set forth on Schedule B hereto.

"Moody's" means Moody's Investors Service, Inc. or any successor thereto.

"Required Collateral Value" has the meaning specified in the Loan Agreement.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Lender's security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

"UCP" means the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, as the same may be amended from time to time.

"Valuation Percentage" means, with respect to any Eligible Security, the percentage set forth opposite such type of Eligible Security on Schedule B hereto.

Section 1.2 UCC Defined Terms. Any term used and defined in Article 8 or Article 9 of the UCC which is used but not otherwise defined in this Agreement has the meaning specified in the UCC.

Section 1.3 Other Defined Terms. Any capitalized term used but not otherwise defined herein or in the UCC shall have the meaning specified in the Loan Agreement.

Section 1.4 Incorporation by Reference. Section 1.2 of the Loan Agreement is hereby incorporated herein by this reference with the same effect as though set forth in its entirety herein, *mutatis mutandis*.



## ARTICLE II

### COLLATERAL

#### Section 2.1 Collateral Requirements.

(a) The Pledgor hereby covenants and agrees with the Lender that the Pledgor shall, on or prior to the Initial Loan Funding Date and at all times thereafter until the Obligations have been paid and performed in full and all of the Loan Documents have terminated, pledge and grant a security interest to the Lender in Eligible Assets and/or deliver one or more Eligible Letter(s) of Credit to the Lender having an aggregate Collateral Value which is equal to or greater than the Required Collateral Value in effect at such time.

(b) The Pledgor hereby further covenants and agrees with the Lender that, with respect to each Collateral Deposit Date occurring from and after the Initial Loan Funding Date, following receipt by the Pledgor of a Collateral Notice, the Pledgor shall, at or prior to the Cut-Off Time on any such Collateral Deposit Date, pledge and grant a security interest to the Lender in Eligible Assets and/or deliver one or more Eligible Letter(s) of Credit to the Lender, in an aggregate amount sufficient to cause the aggregate Collateral Value of all Collateral then pledged and/or delivered to the Lender hereunder to be equal to or greater than the Required Collateral Value in effect on such date.

Section 2.2 Pledge and Grant of Security Interest. To secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Obligations, the Pledgor hereby pledges, assigns and transfers to the Lender, and hereby grants to the Lender, a valid, perfected and continuing first priority security interest in and Lien on all of the Pledgor's right, title and interest in and to any and all of the following assets and properties now owned or at any time hereafter arising or acquired by the Pledgor or in which the Pledgor now has or at any time in the future may acquire any right, title or interest: (a) the Collateral Account, (b) all Eligible Assets of the Pledgor which are held and maintained in the Collateral Account and all principal, interest, dividends, distributions, payments, security entitlements, options, certificates, and other property of, from, on, or with respect to any of the foregoing or which may otherwise be issued, granted, paid or distributed to or held by the Pledgor in respect of any of the foregoing, and (c) all Proceeds of any and all of the foregoing (all of the foregoing, together with any Eligible Letter of Credit issued for the benefit of and delivered to the Lender, being referred to herein collectively as the "Collateral"). The Collateral shall be subject to increase and other adjustment from time to time in accordance with Sections 2.1 and 2.3.

#### Section 2.3 Adjustments to Collateral.

(a) With respect to any Collateral Account established as provided in this Agreement, the Pledgor shall deliver (or shall cause to be delivered) to the Lender an account statement of the Collateral Account setting forth each Eligible Asset constituting Collateral hereunder which is held and maintained in the Collateral and the value thereof on and as of the Cut-Off Time on each Collateral Valuation Date (each, a "Collateral Account Statement"), within five (5) Business Days following such Collateral Valuation Date.

(b) The Lender shall, with respect to each Collateral Valuation Date, determine the aggregate Collateral Value of all Collateral then securing or supporting the payment and performance of the Obligations, as of the Cut-Off Time on such Collateral Valuation Date.

(c) If the aggregate Collateral Value of all Collateral then pledged and/or delivered to the Lender hereunder on or as of any Collateral Valuation Date, as determined by the Lender, is less than the then applicable Required Collateral Value for such Collateral Valuation Date, as determined by the Lender, the Lender may in its sole discretion deliver written notice of such determination to the Pledgor (each, a "Collateral Notice") requiring the Pledgor to pledge and/or deliver additional Eligible Collateral to the Lender at or prior to the Cut-Off Time on the date which is five (5) Business Days after the date of receipt by the Pledgor of such Collateral Notice (each, a "Collateral Deposit Date"), and if any such Collateral Notice is delivered to the Pledgor, the Pledgor shall, at or prior to the Cut-Off Time on such Collateral Deposit Date, pledge and/or deliver additional Eligible Collateral to the Lender, in an aggregate amount or amounts which is or are sufficient to cause the aggregate Collateral Value of all Collateral then pledged and/or delivered to the Lender to equal the then applicable Required Collateral Value.

(d) If the aggregate Collateral Value of all Collateral pledged and/or delivered by the Pledgor to the Lender hereunder on or as of any Collateral Valuation Date is greater than the then applicable Required Collateral Value for such Collateral Valuation Date (any such Collateral, "Excess Collateral"), the Pledgor may, if no Event of Default has occurred and is continuing, deliver written notice to the Lender of such Excess Collateral and request therein that the Lender (i) release the Lender's security interest in such Excess Collateral or (ii) consent to the reduction of the stated face amount of (or the termination of) any Eligible Letter of Credit constituting Collateral, in each or either case in an amount that will not cause the aggregate Collateral Value of all remaining Collateral to be less than the then applicable Required Collateral Value, as determined by the Lender in its sole and absolute discretion.

(e) All calculations made by the Lender under this Agreement of values and amounts in respect of or involving Collateral, Collateral Value, or Required Collateral Value shall be binding and conclusive on the Pledgor absent manifest error.

#### Section 2.4 Additional Provisions.

(a) All Eligible Assets pledged to the Lender as Collateral hereunder shall be transferred and delivered by the Pledgor to and held and maintained in the Collateral Account. The Pledgor will enter into (and will cause the Collateral Intermediary to enter into) a Control Agreement with respect to the Collateral Account, and the Pledgor will promptly take all other actions requested by the Lender from time to time to establish the Lender's "control" (within the meanings of Sections 8-106, 9-104 and 9-106 or any other applicable provision of the UCC) over the Collateral Account and all Collateral held or maintained (or to be held or maintained) from time to time in the Collateral Account.

(b) The Pledgor shall, at least ten (10) Business Days prior to the issuance of any Letter of Credit proposed to constitute Collateral hereunder (i) advise the Lender in writing of (A) the name, address and appropriate contact information of the issuer of such proposed Letter of Credit, (B) the stated face amount of such proposed Letter of Credit, and (C) the term of such

proposed Letter of Credit, and (ii) deliver to the Lender a draft of such proposed Letter of Credit for review and approval by the Lender.

Section 2.5 Letter of Credit Default.

(a) The occurrence of any of the following events with respect to any Letter of Credit which has been delivered to the Lender as Collateral hereunder or with respect to any Letter of Credit Issuer (each, a "Letter of Credit Default") shall, without demand, presentment or any other notice of any kind, result in such Letter of Credit no longer constituting Collateral for purposes of this Agreement and the other Loan Documents if such Letter of Credit is not used or otherwise leads to exist on or prior to the Letter of Credit Cure Date:

(i) the Letter of Credit Issuer shall fail to comply with or perform its obligations under such Letter of Credit; or

(ii) the Letter of Credit Issuer shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or

(iii) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect; or

(iv) if the Letter of Credit Issuer:

(A) no longer satisfies the requirements set forth in the definition of "Letter of Credit Issuer" in this Agreement,

(B) is dissolved (other than pursuant to a consolidation, amalgamation or merger); or

(C) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; or

(D) makes a general assignment, arrangement or composition with or for the benefit of its creditors; or

(E) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (2) is not dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation thereof; or

(F) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); or

(G) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or

(H) has a third party take possession of all or substantially all its assets or has execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such lender maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) calendar days thereafter; or

(I) consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such Letter of Credit Issuer to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(J) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (B) through (I) above (inclusive); or

(K) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(L) due to the adoption of, or any change in, any Applicable Law, is unable to perform its obligations under or with respect to such Letter of Credit.

(b) Upon the occurrence and during the continuance of a Letter of Credit Default with respect to any Letter of Credit constituting Collateral hereunder, the Pledgor shall notify the Lender in reasonable detail thereof immediately upon obtaining knowledge thereof and the Pledgor shall (i) or cause to be cured such Letter of Credit Default and/or (ii) pledge and/or deliver additional Eligible Collateral to the Lender hereunder, such that the aggregate Collateral Value of all Collateral then pledged and/or delivered to the Lender hereunder on such date, as determined by the Lender, is equal to or greater than the then applicable Required Collateral Value for such date, on or before the date which is the fifth (5th) Business Day after the Pledgor has knowledge of the occurrence of such Letter of Credit Default (any such date, the "Letter of Credit Cure Date").

#### Section 2.6 Lien Perfection and Priority; Further Assurances.

(a) The Pledgor shall at all times cooperate with the Lender and its agents, attorneys and designees, and shall comply with any reasonable request of any such Person, in authorizing, executing, filing or causing to be filed all UCC-1 financing statements and all UCC-3 continuation statements as may be required under the UCC and such other instruments, assignments or documents as are in the determination of the Lender necessary to perfect, preserve or protect the Lender's continuing, first priority Lien on any of the Collateral. The Pledgor shall take all other actions as may be required by the Lender from time to time to perfect

or to continue the perfection of, to achieve the intended priority of and to enforce, the Lender's continuing, first priority Lien upon, any of the Collateral.

(b) The Pledgor hereby authorizes the Lender and its agents and attorneys to file (or cause to be filed) all UCC-1 financing statements and all UCC-3 continuation statements, and all assignments and amendments thereto and other filing or recording documents, determined by the Lender to be necessary with respect to the Collateral, without the signature of the Pledgor, and in such form and in such offices and jurisdictions as the Lender determines from time to time to be necessary or appropriate to perfect or maintain perfection of the Lender's continuing, first priority Lien on any of the Collateral. The Pledgor agrees that a photographic or other reproduction of this Agreement shall be sufficient as a financing statement and may be filed in any appropriate office in lieu thereof.

Section 2.7 Security for Secured Obligations. This Agreement and the Liens created hereunder secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Obligations. Without limiting the foregoing, this Agreement secures the payment of all amounts that constitute part of the Obligations and would be owed to the Lender but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Borrower, the Pledgor or any other Person.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of Pledgor. In order to induce the Lender to enter into this Agreement and the other Loan Documents and to make any Advance, the Pledgor hereby represents and warrants to the Lender at all times while this Agreement is in effect as follows:

(a) Residence. The Pledgor is an individual with his or her principal residence at the address set forth in the preamble of this Agreement. The Pledgor has the power and authority, and the legal right, to execute, deliver and perform its obligations under this Agreement and the Control Agreement and has taken all necessary organizational action to authorize the execution, delivery and performance of this Agreement and the Control Agreement.

(b) Authorizations. All authorizations, consents, approvals, registrations, filings, exemptions and licenses with or from any Governmental Authority or any other Person that are necessary in connection with the execution and delivery by the Pledgor of this Agreement and the Control Agreement, or for the performance by the Pledgor of his or her obligations hereunder and thereunder, have been effected and obtained and are in full force and effect.

(c) Execution and Delivery; Enforceability. The Pledgor has duly executed and delivered this Agreement and the Control Agreement. This Agreement and the Control Agreement have been duly executed and delivered by the Pledgor and constitutes a legal, valid and binding obligation of the Pledgor, enforceable against the Pledgor in accordance with its respective terms, subject as to enforceability to applicable bankruptcy, insolvency and similar



laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Pledgor acknowledges and agrees that the Lender is entering into the Loan Agreement with the Borrower and is making Advances to the Borrower under the Loan Agreement in reliance upon the representations and warranties, covenants and other agreements of the Pledgor in this Agreement.

(d) No Conflicts. The execution, delivery and performance by the Pledgor of this Agreement and the Control Agreement do not and will not (i) conflict with, result in a breach of, or constitute a default under, any terms or provisions of any agreement or instrument to which the Pledgor is a party or by which the Pledgor or any of the assets of the Pledgor is bound, or any existing Applicable Law of any Governmental Authority having jurisdiction over the Pledgor or any activities or properties of the Pledgor, or (ii) result in, or require the creation or imposition of, any Lien upon or with respect to any properties now or hereafter owned by the Pledgor (other than the Liens created hereunder).

(e) Applicable Laws. The Pledgor is in compliance with all Applicable Laws.

(f) Collateral.

(i) The Pledgor is the sole direct legal and beneficial owner of all Eligible Assets constituting Collateral from time to time hereunder free and clear of any Lien, except for Liens created hereunder. The Pledgor has not filed or consented to the filing of any UCC-1 financing statement or analogous document under the UCC or any other Applicable Laws covering any Collateral, except for UCC financing statements filed in favor of the Lender.

(ii) The security interest granted by the Pledgor to the Lender hereunder constitutes a valid, enforceable, perfected first priority security interest in and to all of the Eligible Assets constituting Collateral hereunder, securing the payment and performance of the Obligations, enforceable in accordance with the terms hereof against all creditors of the Pledgor and any Person purporting to purchase any such Collateral from the Pledgor. All assets and properties pledged, provided and delivered by the Pledgor to the Lender from time to time as Collateral hereunder (other than the Collateral Account and any Letter of Credit) are Eligible Assets. Each Letter of Credit delivered by the Pledgor to the Lender as Collateral hereunder is an Eligible Letter of Credit.

(iii) All actions and consents, filings, notices, registrations, and recordings necessary for the exercise by the Lender of any rights and remedies in respect of the Collateral have been taken, made or obtained or, in the case of filings or recordings, authorized. All information supplied by the Pledgor to the Lender with respect to any of the Collateral, the Collateral Account, the Collateral Intermediary and any Letter of Credit Issuer (including any information contained on Schedule A hereto) is true and correct.

(iv) If the Collateral Account is a securities account, the Pledgor is the sole entitlement holder of the Collateral Account and the Pledgor has not consented, to, and is not otherwise aware of, any Person (other than the Lender pursuant hereto) having



"control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in or claim against, the Collateral Account or any securities or other property credited thereto.

(v) If the Collateral Account is a deposit account, the Pledgor is the sole holder of the Collateral Account and the Pledgor has not consented to, and is not otherwise aware of, any Person (other than the Lender pursuant hereto) having either sole dominion and control (within the meaning of common law) or "control" (within the meanings of Section 9-104 of the UCC) over, or any other interest in or claim against, the Collateral Account or any other property deposited therein

(g) Taxes. The Pledgor has filed all tax returns required to be filed by the Pledgor and has paid all taxes and other governmental charges due pursuant to such returns.

(h) Litigation. There is no action, suit, proceeding or investigation at law or in equity by or before any Governmental Authority now pending or, to the best knowledge of the Pledgor, threatened (i) against or affecting the Pledgor or any of the Collateral, or (ii) that questions or would question the validity of this Agreement or any of the Collateral.

(i) Independent Investigation. The Pledgor has, independently and without reliance upon the Lender based on such documents and information as he or she has deemed appropriate, made his or her own credit analysis and decision to enter into this Agreement. The Pledgor will benefit directly and indirectly from its execution and delivery of this Agreement and from the Advances by the Lender to the Borrower under the Loan Agreement. There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived

#### ARTICLE IV

#### COVENANTS

The Pledgor hereby covenants and agrees with the Lender that, from and after the date of this Agreement until all of the Obligations have been paid and performed in full and this Agreement and the other Loan Documents shall have been terminated:

Section 4.1 Collateral. The Pledgor will (a) act in good faith and in a lawful manner with respect to the Collateral and maintain the Collateral in full force and effect, (b) not sell, assign, transfer or convey, or incur, assume, create or permit to exist any Lien upon, or terminate, any of the Collateral or withdraw or transfer any of the Collateral from the Collateral Account (other than (x) the Liens created hereunder and (y) except as otherwise expressly permitted under this Agreement and the Control Agreement), (c) maintain the security interest created under this Agreement in any Collateral as a valid, enforceable, perfected first priority security interest in such Collateral and shall defend his or her right, title and interest in and to the Collateral and such security interest against all claims of all Persons other than the Lender, (d) not enter into any agreement or undertaking restricting the right or ability of the Pledgor or the Lender to sell, assign or transfer, or to draw or otherwise realize upon, any of the Collateral or any proceeds thereof, (e) furnish to the Lender from time to time statements and schedules further identifying and describing the Collateral as the Lender may reasonably request, and (f) shall not take or

permit any action that could impair the Lender's rights or interests in the Collateral or the perfection or priority of the security interest created hereunder.

Section 4.2 Payment of Obligations. The Pledgor will pay and discharge or otherwise satisfy at or before maturity or before delinquency, as the case may be, all Taxes, fees, assessments and other claims imposed upon or in respect of any of the Collateral, as well as all claims of any kind against or with respect to any of the Collateral, except for any such Tax, fee, assessment or claim (a) the amount or validity of which is currently being contested in good faith by the Pledgor in appropriate proceedings, (b) such contest suspends the collection or enforcement of any Lien securing such tax, fee, assessment or claim, and (c) such proceedings could not reasonably be expected to result in the sale, forfeiture, loss or cancellation of any material portion of the Collateral or any interest therein.

Section 4.3 Notice of Certain Events. The Pledgor will promptly and in any event not more than three (3) Business Days after obtaining knowledge thereof notify the Lender in writing of (a) the occurrence of any Event of Default or Letter of Credit Default, (b) the existence of any Lien on or any other claim to any part of the Collateral (other than Liens created hereunder), (c) the commencement of any litigation, suit or other proceeding or investigation of or affecting the Pledgor or any of the Collateral, the Borrower, the Life Insurance Policy, or any other Loan Document, (d) the inaccuracy or incompleteness in any material respect of any of the representations and warranties set forth in Article III hereof or in Article IV of the Loan Agreement or (e) the occurrence of any other event or circumstance that could reasonably be expected to materially and adversely affect (i) the performance by the Pledgor of his or her obligations under this Agreement, (ii) the validity or enforceability of this Agreement or the Control Agreement or the security interests created hereunder or (iii) the financial condition of the Pledgor.

Section 4.4 Change of Name or Address. The Pledgor will provide to the Lender thirty (30) days' prior written notice to the Lender of any change to his or her legal name or the location of the address of his or her principal residence from that set forth in this Agreement.

Section 4.5 Further Assurances. The Pledgor will, at any time or from time to time upon the request of the Lender, promptly execute and deliver such further agreements, instruments, documents, certificates, consents and acknowledgments, and do such other acts and things, as the Lender may request in writing from time to time in order to fully effect the purposes and intent of this Agreement or the Control Agreement.

## ARTICLE V

### EVENTS OF DEFAULT

Section 5.1 Eligible Assets Collateral. If an Event of Default shall occur and be continuing, the Lender may without notice to the Pledgor deliver (or cause to be delivered) to the Collateral Intermediary a Notice of Exclusive Control (as defined in the Control Agreement), or any other document as required by the Collateral Intermediary for the lender to take exclusive control, with respect to the Collateral Account and any Collateral held therein.

Section 5.2 Letters of Credit. If an Event of Default shall occur and be continuing, the Lender may without notice to the Pledgor draw upon (and up to the undrawn portion of) any Letter of Credit delivered to the Lender as Collateral hereunder. Any cash proceeds received by the Lender from drawing upon any such Letter of Credit may be applied by the Lender in accordance with applicable provisions of the Loan Agreement or may be held by the Lender as additional Collateral securing the payment and performance of the Obligations.

Section 5.3 Power of Attorney.

(a) The Pledgor hereby irrevocably constitutes and appoints the Lender and any officer, servicer, attorney or agent of the Lender, with full power of substitution, as his or her true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Pledgor and in the name of the Pledgor or in its own name, from time to time in the Lender's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute and deliver any and all documents and instruments that the Lender may deem necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, the Pledgor hereby gives the Lender and said other attorneys the power and right, on behalf of the Pledgor, without notice to or assent by the Pledgor to do any or all of the following:

(i) (A) to ask, demand, collect, receive payment of, and give acquittances and receipts for, any and all moneys, claims and other amounts due and to become due at any time under or in respect of any Collateral and, in the name of the Pledgor or in its own name or otherwise, (B) in the name of the Pledgor, in his or her own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under or in respect of any Collateral and file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Lender for the purpose of collecting any and all such moneys due under or in respect of any Collateral whenever payable and (C) to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Lender for the purpose of collecting any and all such moneys due under any Collateral whenever payable; and

(ii) (A) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due, and to become due thereunder, directly to the Lender or as the Lender shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due, and to become due at any time, in respect of or arising out of any Collateral; (C) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right or remedy in respect of any Collateral; (D) to defend any suit, action or proceeding brought against the Pledgor with respect to any Collateral; (E) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate; (F) to sell, transfer, pledge, draw upon or otherwise realize upon, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do, at the Lender's option and the Pledgor's sole cost and

expense, at any time or from time to time, all acts and things that the Lender reasonably deems necessary to protect, preserve, draw upon or otherwise realize upon the Collateral and the Lender's first priority Lien therein, in order to effect the intent of this Agreement, all as fully and effectively as the Pledgor might do; and (G) to pay or discharge any taxes, fees, assessments or other claims levied or placed on or threatened against any of the Collateral.

(b) The Lender agrees that, except upon the occurrence and during the continuance of any Event of Default, it will forbear from exercising the powers of attorney contained in this Section 5.3. The Pledgor hereby ratifies, to the fullest extent permitted by law, all that any said attorney shall lawfully do or cause to be done by virtue hereof. All powers of attorney granted pursuant to this Section 5.3 are coupled with an interest, and shall be irrevocable until the Secured Obligations are paid and performed in full.

#### Section 5.4 Rights and Remedies Upon Event of Default.

(a) If any Event of Default shall occur and be continuing, the Lender may exercise, in addition to all other rights and remedies granted to it in this Agreement, any other Loan Document, any Letter of Credit, Applicable Law or otherwise, all rights and remedies of a secured party under the UCC (whether or not the UCC applies to any of the affected Collateral) with respect to any Collateral (other than a Letter of Credit) and all rights and remedies of a beneficiary under the ISP98 or the UCP with respect to any Letter of Credit, and any other right or remedy available to the Lender under Applicable Law, in equity or otherwise.

(b) Without limiting the generality of the foregoing, the Pledgor expressly agrees that in any such event the Lender, without demand, performance, advertisement or notice of any kind (except the ten (10) day notice to the extent specified below) to or upon the Pledgor or any other Person (all and each of which demands, advertisements and/or notices are hereby expressly waived to the maximum extent permitted by the UCC and other Applicable Law), may forthwith collect, receive, appropriate, draw upon and otherwise realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, transfer, give an option or options to purchase, or otherwise dispose of and deliver said Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange or broker's board or any of the Lender's offices or elsewhere at such prices and on such other terms and conditions as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole, or any part of the Collateral so sold, free of any right or equity of redemption, which equity of redemption the Pledgor hereby waives and releases. The Pledgor further agrees, at the Lender's request, to assemble the Collateral and make it available to the Lender at places that the Lender shall reasonably select, whether at the Pledgor's premises or elsewhere. The Lender may utilize any information provided to the Lender by the Pledgor or any other Person in order to exercise any of its rights and remedies hereunder to the fullest extent permitted by Applicable Law. The Lender shall apply the net proceeds of any such collection, recovery receipt, appropriation, realization or sale, as provided in Section 5.4(d) hereof and only after the payment by the Lender of any other amount required by any provision of law, including Article 9 of the UCC, will the Lender be required to account for the surplus, if any, to the Pledgor. To the maximum extent



permitted by Applicable Law, the Pledgor hereby waives all claims, damages, and demands against the Lender arising out of the repossession, retention, sale, assignment, transfer, drawing or other realization of or upon any of the Collateral, except for those arising directly from the Lender's gross negligence or willful misconduct. The Pledgor agrees that the Lender need not give more than ten (10) days' notice of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters and that the Lender need give no notice in respect of Collateral of a type customarily sold on a recognized market. The Lender shall have no obligation to marshal any present or future collateral security. The Pledgor shall remain liable for any deficiency if the proceeds of any sale, assignment, transfer or other realization of or upon any of the Collateral are insufficient to pay all amounts to which the Lender is entitled, the Pledgor also being liable for the fees and expenses of any attorneys employed by the Lender to collect such deficiency.

(c) The Pledgor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by Applicable Law) of any kind in connection with this Agreement or any Collateral.

(d) The proceeds of any sale, assignment, transfer, disposition, drawing or other realization upon all or any part of the Collateral shall be applied by the Lender in the following order of priorities:

First, to the payment of the costs and expenses of such sale, including, without limitation, all costs and expenses of the Lender and its agents and all legal fees, costs and expenses of its counsel, and all expenses, liabilities and advances made or incurred by the Lender in connection therewith or pursuant to this section;

Second, to the Lender for the payment in full of the Obligations; and

Finally, after payment in full of all the Obligations, to the payment of the Pledgor or to whomsoever may be lawfully entitled to receive the same as a court of competent jurisdiction may direct.

(e) Any cash held by or on behalf of the Lender and all cash proceeds received by or on behalf of the Lender in respect of any sale, assignment, transfer or other disposition of, drawing under, collection from, or other realization upon, all or any part of the Collateral may, in the discretion of the Lender, be held by the Lender as collateral for, and/or then or at any time or from time to time thereafter applied (after payment or deduction of any amounts payable to the Lender pursuant to Section 5.4(d) hereof) in whole or in part by the Lender against, all or any part of the Obligations.

(f) The Lender may sell, assign, transfer or otherwise dispose of any of the Collateral without giving any obligations or warranties as to the Collateral. The Lender may disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale, assignment, transfer or other disposition of any Collateral. The Pledgor authorizes the Lender to execute, in connection with any sale, assignment, transfer or other disposition of any of the Collateral, any endorsements, assignments

or other instruments of conveyance or transfer with respect to any of the Collateral. The Lender may comply with any Applicable Law in connection with the sale, assignment, transfer or other disposition of, or any drawing or other realization upon, any of the Collateral and such compliance will not be considered adversely to affect any sale, assignment, or other disposition of, or drawing or other realization upon, any of the Collateral.

**Section 5.5 Performance of Pledgor Obligations.** If the Pledgor fails to perform or comply with any of his or her obligations under this Agreement, the Lender may itself perform or comply, or otherwise cause performance or compliance, with such obligations. All costs and expenses paid or incurred by the Lender in connection with such performance or compliance or with the exercise of any rights or remedies under Section 5.4, in each case, together with interest thereon at the Applicable Interest Rate then in effect under the Loan Agreement with respect to the Loan, shall be payable by the Pledgor to the Lender on demand and shall constitute part of the Obligations.

**Section 5.6 Lender Obligations.** The rights, remedies and powers conferred on the Lender pursuant to this Agreement are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such rights, remedies and powers. The Lender shall be accountable to the Pledgor only for amounts that the Lender actually receives as a result of the exercise of such rights, remedies and powers and none of the Lender nor any of its directors, officers, employees, attorneys, agents or attorneys-in-fact (each, a "Lender Party") shall be responsible to the Pledgor or any other Person for any act or failure to act, except for the Lender's own gross negligence or willful misconduct. The Lender's sole duty with respect to the custody, safekeeping and physical preservation of any Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with such Collateral in a manner substantially similar to how the Lender deals with similar property for its own account. None of the Lender nor any other Lender Party shall be liable for any failure to demand, collect, receive, recover, draw upon or otherwise realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell, assign, transfer or otherwise dispose of any Collateral upon the request of the Pledgor or any other Person (except as otherwise required by Applicable Law) or to take any other action whatsoever with regard to the Collateral or any part thereof.

## ARTICLE VI

### MISCELLANEOUS

**Section 6.1 Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person or when sent by facsimile or other electronic means and electronic confirmation of error free receipt is received or one (1) day after being sent by nationally recognized overnight express courier, delivery fee prepaid, or three (3) days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth under its signature on the signature page hereto.

**Section 6.2 Amendments.** No amendment to any term or provision of this Agreement, nor any waiver therefrom, shall in any event be effective unless the same shall be in writing and



signed by both the parties hereto, and then any such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which given.

Section 6.3 Binding Effect; Assignments. This Agreement and all obligations of the Pledgor and the Lender hereunder shall be binding upon the respective successors and permitted assigns of such party, and shall inure to the benefit of the Lender and its successors and assigns; provided, however, that the Pledgor shall not directly or indirectly assign or transfer any of his or her rights or interests or delegate the performance of any of its obligations under this Agreement to any other Person without the prior express written consent of the Lender, and any attempt to make any such assignment, transfer or delegation without such consent shall be void and ineffective. The Lender may sell, assign or transfer all or any portion of any of its rights, titles, interests and obligations under this Agreement and any other Loan Document to any other Person.

Section 6.4 Acknowledgments. The Pledgor hereby covenants and acknowledges and agrees with the Lender that:

(a) the Lender has no fiduciary or advisory relationship with or duty to the Pledgor arising out of or in connection with this Agreement or any other Loan Document, and the relationship between the Pledgor, on the one hand, and the Lender, on the other hand, in connection herewith or therewith is solely that of debtor and secured party;

(b) no joint venture is created by this Agreement or any other Loan Document or otherwise exists by virtue of any of the transactions contemplated hereby and thereby between or among the Pledgor, the Borrower and the Lender;

(c) the obligations of the parties to this Agreement or any other Loan Document shall not be exclusive to any such party and will in no way limit or restrict the Lender's other businesses, including, without limitation, assisting clients buying and selling insurance products, identifying premium finance arrangements and providing other estate planning and financial advisory services;

(d) any Advances made by the Lender to the Borrower under the Loan Agreement, and the pledge or delivery by the Pledgor to the Lender of any Collateral hereunder, are intended to be made or consummated solely for estate planning purposes and not for personal, family, consumer, household or agricultural purposes; and

(e) the Lender has not provided and will not provide any advice or recommendation to Borrower, the Pledgor, any other Collateral Provider or any other Person with respect to or in connection with the Life Insurance Policy, any other Collateral, this Agreement or any other Loan Document or any transaction contemplated hereunder or thereunder, including but not limited to any advice or recommendation relating to estate or financial planning, or any tax, accounting or legal matters, and that each of the Borrower, the Pledgor and any other Collateral Provider has been represented by its, his or her own competent counsel in connection with the foregoing.

Section 6.5 Security Interest Absolute. All rights and interests of the Lender hereunder, and the grant of a security interest by the Pledgor in the Collateral and all obligations

of the Pledgor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Loan Agreement, any other Loan Document, or any other agreement or instrument, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Loan Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (d) any other event or circumstance that might otherwise constitute a defense available to, or a discharge of, the Pledgor in respect of the Obligations or this Agreement.

Section 6.6 Survival. All covenants, agreements, representations and warranties made by the Pledgor in this Agreement and in any certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Lender and shall survive the execution and delivery of the Loan Documents.

Section 6.7 No Waiver; Remedies Cumulative. No failure or delay on the part of Lender in the exercise of any right, power, privilege, option or remedy hereunder or under any other Loan Document shall impair such right, power, privilege, option or remedy or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such right, power, privilege, option or remedy preclude other or further exercise thereof or of any other right, power, privilege, option or remedy. The rights, powers, privileges, options and remedies given to Lender hereunder are cumulative and shall be in addition to and independent of all rights, powers and remedies under any other Loan Document or existing by virtue of any Applicable Law or principle of equity. Any forbearance or failure to exercise, and any delay in exercising, any right, power, privilege, option or remedy shall not impair any such right, power, privilege, option or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power, privilege, option or remedy.

Section 6.8 Severability. Any provision of this Agreement that is prohibited or unenforceable with respect to any Person or circumstance or in any jurisdiction shall, as to such Person, circumstance or jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision with respect to other Persons or circumstances or in any other jurisdiction.

Section 6.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original for all purposes and all of which shall collectively and separately constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 6.10 Independence of Covenants. All covenants and agreements hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants or agreements, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant or agreement, shall not avoid the occurrence of an Event of Default if such action is taken or such condition exists.

Section 6.11 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW)) AND THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA.

Section 6.12 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). The scope of this waiver is intended to be all-encompassing with respect to any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each of the parties hereto (a) acknowledges that this waiver is a material inducement for the parties to the Loan Documents to enter into a business relationship, that the parties to the Loan Documents have already relied on this waiver in entering into same and the transactions that are the subject thereof, and that they will continue to rely on this waiver in their related future dealings, and (b) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 6.13 Consent to Jurisdiction. With respect to any action or proceeding arising out of or relating to this Agreement, each of the parties hereto, on its own behalf and on behalf of its respective successors and permitted assigns, (a) hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the state courts of the State of New York, and to the jurisdiction of the United States District Court for the Southern District of New York, and (b) to the extent permitted by Applicable Law, hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts, that its property is exempt or immune from execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Agreement or any agreement referred to herein may not be enforced in or by such court. Each of the parties hereto hereby agrees that service of process in any action, suit or proceeding with respect to any matter as to which it submits to jurisdiction herein may be served by mailing a copy thereof by registered or certified mail, postage prepaid, return receipt requested, addressed to a party at its address provided for notices hereunder.

Section 6.14 Costs and Expenses. The Pledgor shall pay to the Lender all Lender Expenses within ten (10) Business Days following written demand therefor.

Section 6.15 Indemnification.

(a) Without limiting any indemnification obligations under any other Loan Documents, in addition to the payment of fees, costs and expenses pursuant to Section 6.14, the Pledgor shall indemnify, defend, pay and hold harmless the Lender, each of its successors, assigns and participants, each of its and their respective affiliates, and each of its and their respective directors, officers, employees, attorneys and agent (each, an "Indemnatee") from and against, and shall pay and reimburse each Indemnatee on demand for, any and all Indemnified Amounts, in each case in any way relating to, arising out of or in connection with any of the following events: (i) the occurrence of any Event of Default under Section 6.1(a)(ii), Section 6.1(b)(ii) or (iii), Section 6.1(c) or Section 6.1(d) of the Loan Agreement pertaining to any failure of or breach by the Pledgor (or made by the Borrower which pertains to the Pledgor) in this Agreement or any other Loan Document, (ii) the occurrence of any Event of Default under Section 6.1(e) of the Loan Agreement, (iii) any fraud, fraudulent misrepresentation by the Borrower, the Manager or the Pledgor with respect to or in connection with the execution, delivery or performance of this Agreement or any other Loan Document or any application for, or the underwriting or issuance of, the Life Insurance Policy or any Letter of Credit, (iv) the misapplication by the Borrower, the Manager, or the Pledgor of any proceeds of the Loan or the Life Insurance Policy, (v) the occurrence of any Event of Default under Section 6.1(f), Section 6.1(g), Section 6.1(h), Section 6.1(i), Section 6.1(j) or Section 6.1(l) of the Loan Agreement relating to the Pledgor or arising out of any act of or by the Pledgor, or (vi) the enforcement of or other exercise of rights and remedies under this Agreement, the Control Agreement or any Letter of Credit or any action of the Borrower, the Manager or the Pledgor with the intent to hinder, delay or interfere with the enforcement or other exercise of rights and remedies under this Agreement or any other Loan Document during the continuance of an Event of Default (each such event or circumstance described in clauses (i) - (vi) above being referred to herein as an "Indemnification Event"); provided, that the Pledgor shall not be required to indemnify any Indemnatee for any Indemnified Amounts hereunder to the extent such Indemnified Amounts are determined to have resulted from the gross negligence or willful misconduct of such Indemnatee as determined by a final nonappealable judgment in its favor on such claim by a court of competent jurisdiction. To the extent that the undertakings to indemnify, defend, pay and hold harmless set forth in this Section 6.15 may be unenforceable in whole or in part because they are violative of any law or public policy, the Pledgor shall contribute the maximum portion that he or she is permitted to pay and satisfy under Applicable Law to the payment and satisfaction of all Indemnified Amounts incurred by the Indemnitees or any of them. The term "Indemnified Amounts" used herein means, collectively, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, settlements, suits, claims, fees, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for any Indemnatee) directly or indirectly relating to or arising from, out of or in connection with any Indemnification Event, regardless of whether any such Indemnatee shall be designated as a party or a potential party to any actual or prospective claim, litigation, proceeding or investigation commenced or threatened by any Person, and any fees or expenses incurred by any Indemnatee in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, paid or incurred by or asserted against any such Indemnatee (including any enforcement of or other exercise of rights or remedies under this Agreement or the Control Agreement and any sale of, collection from or other realization upon any of the Collateral).



(b) The Lender shall furnish to the Pledgor a written statement setting forth in reasonable detail any Indemnified Amounts, and such statement shall be conclusive, absent manifest error, as to the contents thereof.

(c) Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 6.15 shall survive the termination of this Agreement and the other Loan Documents.

Section 6.16 Limitation of Liability. To the fullest extent permitted by Applicable Law, the Pledgor shall not assert, and the Pledgor hereby irrevocably and unconditionally waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any other Loan Document or any of the transactions contemplated hereby or thereby, any Advance or the use of the proceeds thereof, the Life Insurance Policy or any Collateral. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

Section 6.17 Entire Agreement. This Agreement embodies the entire agreement and understanding between the Pledgor and the Lender with respect to the subject matter hereof and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. The Pledgor acknowledges and agrees that there is no oral agreement between the Pledgor and the Lender that has not been incorporated in this Agreement.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned parties have executed and delivered this Collateral Agreement to be effective for all purposes as of the date above first written.

**PLEDGOR:**

**Gina Champion-Cain**

By: 

Name: Gina Champion-Cain

**Address:**

4014 Bandini St.  
San Diego, CA 92103  
Attention: Gina Champion-Cain  
Telephone: (619) 385-1396  
E-mail: [Cris@Americannationalinvestments.com](mailto:Cris@Americannationalinvestments.com)

**LENDER:**

**BANKDIRECT PREMIUM FUNDING,  
LLC**

By: 

Name: Colin Danley

Title: SVP, Business Development

**Address:**

150 N. Field Drive, Suite 190  
Lake Forest, Illinois 60045  
Attention: Colin Danley  
Senior Vice President, Business  
Development  
Telephone: (847) 295-4161  
E-mail: [cdanley@bankdirectcapital.com](mailto:cdanley@bankdirectcapital.com)

#053117

*Signature Page to Collateral Agreement*



**SCHEDULE A**

Collateral Intermediary: N/A (Cash to be paid to Lender)

Collateral Account: N/A (Cash to be paid to Lender)

Type of Account: N/A at Loan Closing

#053117

**AMENDMENT TO COLLATERAL AGREEMENT**

**SCHEDULE A**

Collateral Intermediary: BankDirect (Texas Capital Bank)

Collateral Account: [REDACTED] 2393

Type of Account: CD

Pledgor Initials: <sup>DS</sup>  
ell

Lender Initials: CD

**SCHEDULE B****ELIGIBLE SECURITIES AND VALUATION PERCENTAGES**

<u>Eligible Security:</u>	<u>Time to Maturity:</u>	<u>Valuation Percentage:</u>
<u>U.S. Treasury Bills:</u> having a maturity at issuance of no greater than 1 year.		95%
	Less than one (1) year:	95%
<u>U.S. Treasury Notes:</u> having a maturity at issuance of at least 1 year but less than 10 years.	Greater than one (1) year and less than three (3) years:	90%
	Three (3) or more years:	85%
	Less than one (1) year:	95%
<u>U.S. Treasury Bonds</u>	Greater than one (1) year and less than three (3) years:	90%
	Three (3) or more years:	85%
	Less than one (1) year:	95%
<u>U.S. Treasury Inflation Protected Issues</u>	Greater than one (1) year and less than three (3) years:	90%
	Three (3) or more years:	85%

#053117

Eligible Security:	Time to Maturity:	Valuation Percentage:
<u>GNMA, FNMA or FHLMC Agency Debt</u> : Fixed-rate, callable, non-amortizing U.S. Dollar-denominated senior debt securities in book entry form issued by GNMA, FNMA or FHLMC, the full and timely payment of principal and interest of which is guaranteed by the U.S. Government.		80%
<u>GNMA, FNMA or FHLMC Certificates</u> – Mortgage Backed Securities: Single-class mortgage pass-through or participation certificates in book-entry form backed by single-family residential mortgage loans, the full and timely payment of principal and interest of which is guaranteed by GNMA, FNMA or FHLMC (excluding Real Estate Mortgage Investment Conduit or other multi-class pass-through certificates, collateralized mortgage obligations, pass-through certificates backed by adjustable rate mortgages, securities paying interest or principal only and similar derivatives securities).		80%
<u>U.S. Municipal Debt Obligations</u>		80%
<u>U.S. Money Market Fund Securities</u>		90%
<u>U.S. Corporate Debt Obligations of Companies</u> : senior secured or unsecured debt obligations of companies, the common stock of which is listed or quoted on a U.S. securities exchange.		80%
<u>Equity Securities</u> : common stock or American Depositary Receipts or preferred stock of companies that are listed or quoted on a U.S. securities exchange.		50%
<u>Closed-End Fund Securities</u> : closed-end fund shares of companies or other		50%

#053117

Eligible Security:	Time to Maturity:	Valuation Percentage:
issuers that are listed or quoted on a U.S. securities exchange.		
<u>Open-End Mutual Fund Securities:</u> open-end mutual fund shares issued by companies that are subject to regulation as "investment companies" under the U.S. Investment Company Act of 1940, as amended.		50%
<u>Other Debt or Equity Securities:</u> subject to approval by the Lender.		As determined by the Lender

#053117

### SCHEDULE C

#### MARKET VALUE

Unless otherwise agreed in writing by the Pledgor and the Lender, the Market Value of any Eligible Security on any date shall be determined as follows (capitalized terms used below which are not defined either in this Schedule, in the Collateral Agreement or in the Loan Agreement shall have the respective meanings set forth below):

(a) The Market Value for any Eligible Security shall be determined by the Lender in accordance with market practice for such Eligible Security, based on (i) the price for such Eligible Security as of the most recent Close of Trading obtained by the Lender from the securities exchange on which such Eligible Security is listed, quoted or traded or another generally recognized independent leading source selected by the Lender or (ii) if such Eligible Security is not listed, quoted or traded on a securities exchange, the closing bid quotation at the most recent Close of Trading obtained by the Lender for such Eligible Security from another such source (provided that if the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation).

(b) All determinations of Market Value under this Schedule shall include, where applicable, accrued and unpaid interest to the extent not already included therein, unless market practice with respect to the valuation of such Securities in connection with securities loans is to the contrary.

(c) The Market Value of cash shall be the amount thereof.

(d) The determinations of Market Value by the Lender provided for in this Schedule shall apply for all purposes under the Agreement. The Pledgor agrees that the Lender is not acting as a fiduciary for, or as an advisor to, the Pledgor, the Borrower or any other Person in respect of any of its determinations of Market Value under this Agreement.

"Close of Trading" shall mean, with respect to any Eligible Security, the end of the primary scheduled weekday trading session closing time established by the principal exchange or market for such Eligible Security on a Business Day, without regard to after hours or any other trading outside of the regular trading session hours.



**EXHIBIT D**

**COLLATERAL ACCOUNT CONTROL AGREEMENT**

Date: August     , 2018 September 5, 2018

Texas Capital Bank, National Association  
2000 McKinney Avenue, Suite 700  
Dallas, Texas 75201

Whereas, pursuant to that certain Loan Agreement dated as of August 20, 2018 between The Era Boutique Hotel LLC, as the Borrower (the "Borrower") and BankDirect Premium Funding, LLC, a South Dakota limited liability company (the "Lender"), the Lender desires to make Advances (as defined in the Loan Agreement) to the Borrower from time to time to finance the payment of premiums on the Life Insurance Policy (as defined in the Loan Agreement).

Whereas, pursuant to that certain Collateral Agreement dated as of August 20, 2018 between Gina Champion-Cain as the Pledgor (the "Pledgor") and Lender, the Pledgor has agreed to pledge and/or deliver Collateral (as defined in the Collateral Agreement) to the Lender from time to time to secure the payment and performance of the Obligations (as defined in the Loan Agreement).

Pledgor has established account number 6116002393, in trust for Lender (collectively, the "Blocked Accounts") with Texas Capital Bank, National Association ("Bank"). Bank has agreed to administer and maintain the Blocked Accounts on behalf of Pledgor for the benefit of Lender.

It is hereby agreed that Lender shall at all times have exclusive dominion and "control" (as defined in Section 9-104 of the Uniform Commercial Code as adopted in the state of Texas) over the Blocked Accounts and all funds in the Blocked Accounts, and neither the Pledgor nor any of its affiliates shall have any dominion or control over the Blocked Accounts or such funds. Bank shall not comply with any requests by the Pledgor in connection with the Blocked Accounts, but Bank may accept deposits from the Pledgor into the Blocked Accounts.

As used in this Agreement, the term "Business Day" means any day, other than a Saturday or Sunday or federal holidays, on which Bank is open for business.

Bank shall use reasonable efforts under existing Bank policies and procedures to prohibit withdrawals or transfers from the Blocked Accounts other than as provided herein.

Pledgor agrees to bear all costs and expenses ("Account Charges") associated with establishing and maintaining the Blocked Accounts, all expenses or adjustments for

collected or uncollected funds and all expenses relating to transferring funds from the Blocked Accounts to Lender's account.

As a condition to the financial accommodations extended by Lender to Borrower, Lender requires control over all funds, checks, and other items of payment and deposited into the Blocked Accounts. Pledgor hereby (i) transfers to Lender exclusive dominion and control over the Blocked Accounts and all funds in the Blocked Accounts, and (ii) authorizes Bank to comply with any request of Lender with regard to deposits into and withdrawals from the Blocked Accounts. Lender shall have a security interest in the deposits into and withdrawals from the Blocked Accounts. Bank and Pledgor hereby agree that Pledgor shall not, and Bank shall not permit Pledgor to, without Lender's prior written consent, (i) change the signatory required on the Blocked Accounts; (ii) terminate the Blocked Accounts unless in accordance with the terms of this letter agreement, (iii) change any instructions under this Agreement, or (iv) attempt to transfer or withdraw any funds from the Blocked Accounts.

By its acknowledgment below, Bank acknowledges that: (i) it has established the Blocked Accounts; (ii) Lender's lien on the Blocked Accounts shall have priority over Bank's interest therein; (iii) it will comply with the instructions it receives from Lender directing disposition of the funds and other property on deposit in the Blocked Accounts without further consent of Pledgor; (iv) Lender has exclusive dominion and control over the Blocked Accounts and all funds in the Blocked Accounts and all available funds in the Blocked Accounts are to be promptly transferred by Bank to Lender's account at Lender's discretion; and (iv) Bank will not grant control over the Blocked Accounts to any other party.

This Agreement will continue in full force and effect until termination by Bank or Lender upon at least thirty (30) days prior written notice to the other parties. Pledgor does not have the right to terminate this Agreement. When all indebtedness now or hereafter owed by Borrower to Lender has been paid in full and Lender has no obligation to make loans or other direct or indirect financial accommodations to Borrower, Lender will terminate this Agreement by giving Bank ten (10) days prior written notice of termination. Unless otherwise instructed by Lender in writing upon termination of this Agreement, Bank will transfer any funds remaining in the Blocked Accounts in accordance with the provisions of this Agreement. Upon termination of this Agreement, Bank will close the Blocked Accounts and no further deposits will be made or accepted into the Blocked Accounts. For the purpose of this paragraph, prior written notice of a termination shall be deemed to have been given two (2) Business Days after deposit in the U.S. mail postage prepaid, addressed as indicated below, or, if earlier, on the date that such written notice is actually received by the noticed party.

All notices, including phone notices, monthly statements of account, and copies of all documents that are to be given or sent to any party hereto must be sent:

If to Bank: Texas Capital Bank, National Association  
2350 Lakeside Blvd, Ste 800  
Richardson, TX 75082  
Attn: Ken Self  
Email: ken.self@texascapitalbank.com

If to Lender: BankDirect Premium Funding, LLC  
150 N Field Dr Suite 190  
Lake Forest, IL 60045  
Attn: Colin Danley  
Email: cdanley@bankdirectcapital.com

If to Pledgor: Gina Champion-Cain  
4014 Bandini St  
San Diego, CA  
Email: cris@americannationalinvestments.com

This Agreement may be amended only by a written agreement signed by Bank, Pledgor and Lender. This Agreement is governed by and will be construed according to the laws of the State of Texas except with regard to the payment of checks or other issues relating to processing or operations of the Blocked Accounts, which issues shall be governed by the laws of the state where the Blocked Accounts are located. This Agreement supersedes, and makes void, any and all agreements entered into between or among Bank, Pledgor and/or Lender prior to the date of this Agreement relating to the services contemplated hereby, and should any conflict occur between the terms and conditions of any prior or subsequent agreement, this Agreement shall prevail.

In order to induce Bank to agree to the terms of this **Collateral Account Control Agreement**, the parties jointly and severally agree to release and hold harmless Bank, its directors, officers, employees, successors and assigns from and against any and all loss, liability, cost, damage, and expense, including reasonable attorney's fees, arising in any manner out of Bank's acting on any notice, orders or instructions concerning the accounts referenced herein or otherwise acting in good faith under this Agreement, except for such loss, liability, cost, damage, and expense, including reasonable attorney's fees, arising from Bank's gross negligence or willful misconduct. Under no circumstances shall Bank be held liable or responsible for consequential, incidental or special damages.

This letter, when signed by Pledgor and acknowledged by Bank, shall constitute an agreement effective as of the date first written above.

*[Remainder of page intentionally left blank]*

DocuSign Envelope ID: 9AADEDFD-1C77-4445-A112-794243586A85

BankDirect Premium Funding, LLC

By: Colin Danley  
Name: Colin Danley  
Title: SVP, Business Development

Gina Champion-Cain

By: DocuSigned by:  
Gina Champion-Cain  
Name: Gina Champion-Cain

TEXAS CAPITAL BANK, NATIONAL ASSOCIATION

By: Ken Seif  
Name: Ken Seif  
Title: SVP