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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2016

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-33662

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**FORESTAR GROUP INC.**

(Exact Name of Registrant as Specified in Its Charter)

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Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

26-1336998  
(I.R.S. Employer  
Identification No.)

6300 Bee Cave Road, Building Two, Suite 500, Austin, Texas 78746  
(Address of Principal Executive Offices, Including Zip Code)

(512) 433-5200  
(Registrant's Telephone Number, Including Area Code)

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Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<u>Title of Each Class</u>	<u>Number of Shares Outstanding as of May 6, 2016</u>
Common Stock, par value \$1.00 per share	33,908,002

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**FORESTAR GROUP INC.**  
**TABLE OF CONTENTS**

<a href="#">PART I— FINANCIAL INFORMATION</a>	<a href="#">3</a>
<a href="#"><i>Item 1. Financial Statements (Unaudited)</i></a>	<a href="#">3</a>
<a href="#">Consolidated Balance Sheets</a>	<a href="#">3</a>
<a href="#">Consolidated Statements of Income and Comprehensive Income</a>	<a href="#">4</a>
<a href="#">Consolidated Statements of Cash Flows</a>	<a href="#">5</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">6</a>
<a href="#"><i>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</i></a>	<a href="#">19</a>
<a href="#"><i>Item 3. Quantitative and Qualitative Disclosures About Market Risk</i></a>	<a href="#">38</a>
<a href="#"><i>Item 4. Controls and Procedures</i></a>	<a href="#">38</a>
<a href="#">PART II— OTHER INFORMATION</a>	<a href="#">39</a>
<a href="#"><i>Item 1. Legal Proceedings</i></a>	<a href="#">39</a>
<a href="#"><i>Item 1A. Risk Factors</i></a>	<a href="#">39</a>
<a href="#"><i>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds</i></a>	<a href="#">39</a>
<a href="#"><i>Item 3. Defaults Upon Senior Securities</i></a>	<a href="#">39</a>
<a href="#"><i>Item 4. Mine Safety Disclosures</i></a>	<a href="#">39</a>
<a href="#"><i>Item 5. Other Information</i></a>	<a href="#">39</a>
<a href="#"><i>Item 6. Exhibits</i></a>	<a href="#">39</a>
<a href="#">SIGNATURES</a>	<a href="#">41</a>

# PART I—FINANCIAL INFORMATION

## Item 1. Financial Statements

### FORESTAR GROUP INC. Consolidated Balance Sheets (Unaudited)

	First Quarter-End 2016	Year-End 2015
(In thousands, except share data)		
<b>ASSETS</b>		
Cash and cash equivalents	\$ 142,646	\$ 96,442
Real estate, net	471,353	586,715
Oil and gas properties and equipment, net	42,380	80,613
Assets held for sale	106,548	—
Investment in unconsolidated ventures	79,013	82,453
Timber	7,694	7,683
Receivables, net	9,677	23,656
Income taxes receivable	14,359	12,056
Prepaid expenses	3,570	3,213
Property and equipment, net	10,195	10,732
Goodwill and other intangible assets	55,861	63,128
Other assets	4,756	5,555
<b>TOTAL ASSETS</b>	<b>\$ 948,052</b>	<b>\$ 972,246</b>
<b>LIABILITIES AND EQUITY</b>		
Accounts payable	\$ 8,576	\$ 11,959
Accrued employee compensation and benefits	1,705	5,547
Accrued property taxes	2,507	4,788
Accrued interest	6,774	3,267
Deferred tax liability, net	1,037	1,037
Earnest money deposits	11,009	10,214
Other accrued expenses	17,718	23,481
Liabilities held for sale	751	—
Other liabilities	24,748	26,323
Debt	372,759	381,515
<b>TOTAL LIABILITIES</b>	<b>447,584</b>	<b>468,131</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		
<b>EQUITY</b>		
Forestar Group Inc. shareholders' equity:		
Common stock, par value \$1.00 per share, 200,000,000 authorized shares, 36,946,603 issued at first quarter-end 2016 and year-end 2015	36,947	36,947
Additional paid-in capital	559,859	561,850
Retained earnings (Accumulated deficit)	(50,422)	(46,046)
Treasury stock, at cost, 3,038,601 shares at first quarter-end 2016 and 3,203,768 shares at year-end 2015	(48,340)	(51,151)
Total Forestar Group Inc. shareholders' equity	498,044	501,600
Noncontrolling interests	2,424	2,515
<b>TOTAL EQUITY</b>	<b>500,468</b>	<b>504,115</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 948,052</b>	<b>\$ 972,246</b>

Please read the notes to consolidated financial statements.

**FORESTAR GROUP INC.**  
**Consolidated Statements of Income and Comprehensive Income**  
**(Unaudited)**

	<b>First Quarter</b>	
	<b>2016</b>	<b>2015</b>
	<b>(In thousands, except per share amounts)</b>	
<b>REVENUES</b>		
Real estate sales and other	\$ 26,408	\$ 21,961
Commercial and income producing properties	9,690	10,869
Real estate	36,098	32,830
Oil and gas	5,352	13,185
Other natural resources	438	1,790
	<u>41,888</u>	<u>47,805</u>
<b>COSTS AND EXPENSES</b>		
Cost of real estate sales and other	(13,262)	(10,362)
Cost of commercial and income producing properties	(5,162)	(7,692)
Cost of oil and gas producing activities	(5,194)	(11,542)
Cost of other natural resources	(385)	(920)
Other operating	(13,414)	(18,060)
General and administrative	(6,479)	(8,142)
	<u>(43,896)</u>	<u>(56,718)</u>
<b>GAIN ON SALE OF ASSETS</b>	2,604	1,176
<b>OPERATING INCOME (LOSS)</b>	596	(7,737)
Equity in earnings of unconsolidated ventures	47	3,045
Interest expense	(7,639)	(8,821)
Other non-operating income	74	917
<b>INCOME (LOSS) BEFORE TAXES</b>	<u>(6,922)</u>	<u>(12,596)</u>
Income tax benefit	2,626	4,359
<b>CONSOLIDATED NET INCOME (LOSS)</b>	<u>(4,296)</u>	<u>(8,237)</u>
Less: Net (income) loss attributable to noncontrolling interests	(80)	79
<b>NET INCOME (LOSS) ATTRIBUTABLE TO FORESTAR GROUP INC.</b>	<u><u>\$ (4,376)</u></u>	<u><u>\$ (8,158)</u></u>
<b>WEIGHTED AVERAGE COMMON SHARES OUTSTANDING</b>		
Basic	34,302	34,168
Diluted	34,302	34,168
<b>NET INCOME (LOSS) PER COMMON SHARE</b>		
Basic	\$ (0.13)	\$ (0.24)
Diluted	\$ (0.13)	\$ (0.24)
<b>TOTAL COMPREHENSIVE INCOME (LOSS)</b>	<u><u>\$ (4,376)</u></u>	<u><u>\$ (8,158)</u></u>

Please read the notes to consolidated financial statements.

**FORESTAR GROUP INC.**  
**Consolidated Statements of Cash Flows**  
**(Unaudited)**

	<b>First Quarter</b>	
	<b>2016</b>	<b>2015</b>
	<b>(In thousands)</b>	
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Consolidated net income (loss)	\$ (4,296)	\$ (8,237)
Adjustments:		
Depreciation, depletion and amortization	4,785	11,325
Change in deferred income taxes	—	(4,359)
Equity in earnings of unconsolidated ventures	(47)	(3,045)
Distributions of earnings of unconsolidated ventures	1,304	2,845
Share-based compensation	1,380	3,342
Real estate cost of sales	12,841	9,884
Dry hole and unproved leasehold impairment charges	—	86
Real estate development and acquisition expenditures, net	(14,794)	(34,769)
Reimbursements from utility and improvement districts	306	4,130
Gain on sale of assets	(2,604)	(1,176)
Other	1,820	1,730
Changes in:		
Notes and accounts receivable	13,979	7,016
Prepaid expenses and other	(660)	2,695
Accounts payable and other accrued liabilities	(6,702)	(15,644)
Income taxes	(2,303)	5,411
Net cash provided by (used for) operating activities	5,009	(18,766)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Property, equipment, software, reforestation and other	(3,501)	(2,809)
Oil and gas properties and equipment	(426)	(23,718)
Investment in unconsolidated ventures	(3,019)	(831)
Proceeds from sales of assets	56,828	2,000
Return of investment in unconsolidated ventures	1,567	655
Net cash provided by (used for) investing activities	51,449	(24,703)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Payments of debt	(11,185)	(2,463)
Additions to debt	1,307	3,119
Deferred financing fees	—	(6)
Distributions to noncontrolling interests, net	(171)	(338)
Exercise of stock options	—	14
Payroll taxes on issuance of stock-based awards	(205)	(723)
Excess income tax benefit from share-based compensation	—	1
Net cash provided by (used for) financing activities	(10,254)	(396)
Net increase (decrease) in cash and cash equivalents	46,204	(43,865)
Cash and cash equivalents at beginning of period	96,442	170,127
Cash and cash equivalents at end of period	\$ 142,646	\$ 126,262

Please read the notes to consolidated financial statements.

**FORESTAR GROUP INC.**  
**Notes to Consolidated Financial Statements**  
**(Unaudited)**

**Note 1—Basis of Presentation**

Our consolidated financial statements include the accounts of Forestar Group Inc., all subsidiaries, ventures and other entities in which we have a controlling interest. We account for our investment in other entities in which we have significant influence over operations and financial policies using the equity method. We eliminate all material intercompany accounts and transactions. Noncontrolling interests in consolidated pass-through entities are recognized before income taxes.

We prepare our unaudited interim financial statements in accordance with U.S. generally accepted accounting principles and Securities and Exchange Commission requirements for interim financial statements. As a result, they do not include all the information and disclosures required for complete financial statements. However, in our opinion, all adjustments considered necessary for a fair presentation have been included. Such adjustments consist only of normal recurring items unless otherwise noted. We make estimates and assumptions about future events. Actual results can, and probably will, differ from those we currently estimate including those principally related to allocating costs to real estate, measuring long-lived assets for impairment, oil and gas revenue accruals, capital expenditure and lease operating expense accruals associated with our oil and gas production activities, oil and gas reserves and depletion of our oil and gas properties. These interim operating results are not necessarily indicative of the results that may be expected for the entire year. For further information, please read the financial statements included in our 2015 Annual Report on Form 10-K.

**Note 2—New and Pending Accounting Pronouncements**

***Adoption of New Accounting Standards***

In April 2015, the FASB issued ASU 2015-03, *Interest – Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*, as part of its initiative to reduce complexity in accounting standards. To simplify presentation of debt issuance costs, the amendments in this update require that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. In August 2015, the FASB issued ASU 2015-15, *Interest-Imputation of Interest (Subtopic 835-30), Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements - Amendments to SEC Paragraphs Pursuant to Staff Announcement at June 18, 2015 EITF Meeting (SEC Update)*, which allows an entity to defer and present debt issuance costs as an asset and subsequently amortize the deferred debt issuance costs ratably over the term of the line-of-credit arrangement, regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The updated standards are effective for financial statements issued for annual and interim periods beginning after December 15, 2015. We adopted ASU 2015-03 in first quarter 2016 and prior period amounts have been reclassified to conform to the current period presentation. As of December 31, 2015, \$8,267,000 of debt issuance costs were reclassified in the consolidated balance sheet from other assets to debt. The adoption did not impact our consolidated financial position, results of operations or cash flows. As permitted under this guidance, we will continue to present debt issuance costs associated with revolving-debt agreements as other assets.

In February 2015, the FASB issued ASU 2015-02, *Consolidation: Amendments to the Consolidation Analysis (Topic 810)*, requiring entities to evaluate whether they should consolidate certain legal entities. All legal entities are subject to reevaluation under the revised consolidation model. The revised consolidation model: (1) modifies the evaluation of whether limited partnerships and similar legal entities are variable interest entities (VIEs) or voting interest entities, (2) eliminates the presumption that a general partner should consolidate a limited partnership, (3) affects the consolidation analysis of reporting entities that are involved with VIEs, and (4) provides a scope exception from consolidation guidance for reporting entities with interests in certain legal entities. The updated standard is effective for financial statements issued for annual and interim periods beginning after December 15, 2015. The adoption of this guidance, which was applied retrospectively, had no impact to the consolidated financial statements.

***Pending Accounting Standards***

In May 2014, the FASB issued Accounting Standards Update (ASU) 2014-09, *Revenue from Contracts with Customers (Topic 606)*, requiring an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The updated standard will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective and permits the use of either the retrospective or cumulative effect transition method. Early adoption is not permitted. The updated standard becomes effective for annual and interim periods beginning after December 15, 2016. In July 2015, the FASB decided to defer the effective date of the new standard by one year, to December 15, 2017. We

have not yet selected a transition method and we are currently evaluating the effect that the updated standard will have on our earnings, financial position and disclosures.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, in order to provide increased transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. The updated standard is effective for financial statements issued for annual periods beginning after December 15, 2019 and interim periods within fiscal years beginning after December 31, 2020 with early adoption permitted. We are currently evaluating the effect that the updated standard will have on our earnings, financial position and disclosures.

In March 2016, the FASB issued ASU 2016-09, *Compensation-Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*, as part of its Simplification Initiative. The areas for simplification in this Update involve several aspects of the accounting for share-based payment transactions, including income tax consequences, classification of awards as either equity or liabilities, and the classification on the statement of cash flows. The updated standard becomes effective for annual and interim periods beginning after December 31, 2016. We are currently evaluating the effect that the updated standard will have on our earnings, financial position and disclosures.

### Note 3—Real Estate

Real estate consists of:

	First Quarter-End 2016			Year-End 2015		
	Carrying Value	Accumulated Depreciation	Net Carrying Value	Carrying Value	Accumulated Depreciation	Net Carrying Value
(In thousands)						
Entitled, developed and under development projects	\$ 352,369	\$ —	\$ 352,369	\$ 352,141	\$ —	\$ 352,141
Undeveloped land (includes land in entitlement)	96,875	—	96,875	98,181	—	98,181
Commercial						
Radisson Hotel & Suites <sup>(a)</sup>	—	—	—	62,889	(29,268)	33,621
Income producing properties						
Eleven <sup>(a)</sup>	—	—	—	53,896	(2,861)	51,035
Dillon <sup>(a)</sup>	—	—	—	19,987	—	19,987
Music Row <sup>(b)</sup>	—	—	—	9,947	—	9,947
Downtown Edge	12,991	—	12,991	12,706	—	12,706
West Austin	9,118	—	9,118	9,097	—	9,097
	<u>\$ 471,353</u>	<u>\$ —</u>	<u>\$ 471,353</u>	<u>\$ 618,844</u>	<u>\$ (32,129)</u>	<u>\$ 586,715</u>

<sup>(a)</sup> Classified as assets held for sale at first quarter-end 2016. Please see **Note 5—Held for Sale** and **Note 19—Subsequent Events**.

<sup>(b)</sup> Sold in first quarter 2016.

In first quarter 2016, we sold Music Row, a planned 230-unit multifamily property that was under construction in Nashville, for \$14,703,000 and recognized a gain of \$3,968,000. In addition, in first quarter 2016, we classified \$105,987,000 in non-core real estate assets, principally the Radisson Hotel & Suites and Eleven and Dillon multifamily properties, as held for sale as result of our plan to market and sell these assets.

Our estimated costs of assets for which we expect to be reimbursed by utility and improvement districts were \$69,770,000 at first quarter-end 2016 and \$67,554,000 at year-end 2015, including \$22,357,000 at first quarter-end 2016 and \$22,302,000 at year-end 2015 related to our Cibolo Canyons project near San Antonio, Texas. In first quarter 2016, we have collected \$306,000 in reimbursements that were previously submitted to these districts. At first quarter-end 2016, our inception-to-date submitted and approved reimbursements for the Cibolo Canyons project were \$54,376,000 of which we have collected \$34,703,000. These costs are principally for water, sewer and other infrastructure assets that we have incurred and submitted or will submit to utility or improvement districts for approval and reimbursement. We expect to be reimbursed by utility and improvement districts when these districts achieve adequate tax basis or otherwise have funds available to support payment.

**Note 4—Oil and Gas Properties and Equipment, net**

Net capitalized costs, utilizing the successful efforts method of accounting, related to our oil and gas producing activities follows:

	First Quarter-End 2016	Year-End 2015
	(In thousands)	
Unproved leasehold interests	\$ 11,453	\$ 19,441
Proved oil and gas properties	75,673	119,414
Total costs	87,126	138,855
Less: accumulated depreciation, depletion and amortization	(44,746)	(58,242)
	<u>\$ 42,380</u>	<u>\$ 80,613</u>

In first quarter 2016, we recorded a net loss of \$10,977,000 on the sale of 190,960 net mineral acres leased from others and 185 gross (66 net) producing oil and gas wells in Nebraska, Kansas, Oklahoma and North Dakota for total sales proceeds of \$32,227,000, which includes \$3,269,000 in reimbursement of capital costs incurred on in-progress wells that were assumed by the buyer. A significant portion of the net loss on sale, \$7,244,000, is related to write-off of allocated goodwill to sold producing oil and gas properties.

**Note 5—Held for Sale**

At first quarter-end 2016, Radisson Hotel & Suites in Austin, Eleven, a 257-unit multifamily property in Austin, Dillon, a planned 379-unit multifamily property in Charlotte and certain oil and gas properties were classified as held for sale.

The major classes of assets and liabilities of the properties held for sale at first quarter-end 2016 are as follows:

	First Quarter-End 2016
Assets Held for Sale:	(In thousands)
Real estate, net of accumulated depreciation of \$32,945	\$ 105,987
Oil and gas properties and equipment, net of accumulated depletion of \$1,162	401
Prepaid expenses	150
Goodwill and other intangible assets	10
	<u>\$ 106,548</u>
Liabilities Held for Sale:	
Other accrued expenses	\$ 74
Other liabilities	677
	<u>\$ 751</u>

**Note 6—Goodwill and Other Intangible Assets**

Carrying value of goodwill and other intangible assets follows:

	First Quarter-End 2016	Year-End 2015
	(In thousands)	
Goodwill	\$ 53,920	\$ 61,164
Identified intangibles, net	1,941	1,964
	<u>\$ 55,861</u>	<u>\$ 63,128</u>



[Table of Contents](#)

Goodwill related to our oil and gas properties is \$50,046,000 and \$57,290,000 at first quarter-end 2016 and year-end 2015. Goodwill associated with our water resources initiatives is \$3,874,000 at first quarter-end 2016 and year-end 2015. The change in goodwill for oil and gas properties is related to goodwill allocated to properties sold or held for sale at first quarter-end 2016.

Identified intangibles include \$1,681,000 in indefinite lived groundwater leases associated with our water resources initiatives and \$260,000 related to patents with definite lives associated with the Calliope Gas Recovery System, a process to increase natural gas production.

#### Note 7—Equity

A reconciliation of changes in equity at first quarter-end 2016 follows:

	Forestar Group Inc.	Noncontrolling Interests	Total
	(In thousands)		
Balance at year-end 2015	\$ 501,600	\$ 2,515	\$ 504,115
Net income (loss)	(4,376)	80	(4,296)
Distributions to noncontrolling interests	—	(171)	(171)
Other (primarily share-based compensation)	820	—	820
	<u>\$ 498,044</u>	<u>\$ 2,424</u>	<u>\$ 500,468</u>

#### Note 8—Investment in Unconsolidated Ventures

At first quarter-end 2016, we have ownership interests in 18 ventures that we account for using the equity method.

In first quarter 2016, we sold our interest in FMF Peakview LLC (360%), a 304-unit multifamily joint venture in Denver, and recognized a gain of \$9,613,000 which is included in gain on sale of assets.

Combined summarized balance sheet information for our ventures accounted for using the equity method follows:

	Venture Assets		Venture Borrowings(a)		Venture Equity		Our Investment	
	First Quarter-End 2016	Year-End 2015	First Quarter-End 2016	Year-End 2015	First Quarter-End 2016	Year-End 2015	First Quarter-End 2016	Year-End 2015
	(In thousands)							
242, LLC <sup>(b)</sup>	\$ 26,534	\$ 26,687	\$ 180	\$ —	\$ 24,577	\$ 24,877	\$ 11,617	\$ 11,766
CL Ashton Woods, LP <sup>(c)</sup>	4,641	7,654	—	—	3,451	6,084	1,653	3,615
CL Realty, LLC	7,761	7,872	—	—	7,709	7,662	3,854	3,831
CREA FMF Nashville LLC <sup>(b)</sup>	56,348	57,820	36,832	50,845	17,940	4,291	3,649	3,820
Elan 99, LLC	44,363	34,192	23,352	14,587	15,429	15,838	13,886	14,255
FOR/SR Forsyth LLC	6,950	6,500	—	—	6,950	6,500	6,255	5,850
FMF Littleton LLC	59,433	52,376	26,706	22,347	24,200	24,370	6,228	6,270
FMF Peakview LLC	—	48,869	—	30,485	—	16,828	—	3,447
HM Stonewall Estates, Ltd <sup>(c)</sup>	1,798	2,842	—	—	1,798	2,842	1,034	1,294
LM Land Holdings, LP <sup>(c)</sup>	25,479	31,984	4,270	7,728	20,619	22,751	9,808	9,664
MRECV DT Holdings LLC	4,215	4,215	—	—	4,215	4,215	3,793	3,807
MRECV Edelweiss LLC	2,404	2,237	—	—	2,404	2,237	2,170	2,029
MRECV Juniper Ridge LLC	4,022	3,006	—	—	4,021	3,006	3,645	2,730
MRECV Meadow Crossing II LLC	2,187	728	—	—	2,187	728	1,982	655
Miramonte Boulder Pass, LLC	13,160	12,627	6,320	5,869	5,349	5,474	5,287	5,349
Temco Associates, LLC	5,295	5,284	—	—	5,181	5,113	2,590	2,557
Other ventures <sup>(d)</sup>	4,167	4,174	2,202	2,242	1,958	1,922	1,562	1,514
	<u>\$ 268,757</u>	<u>\$ 309,067</u>	<u>\$ 99,862</u>	<u>\$ 134,103</u>	<u>\$ 147,988</u>	<u>\$ 154,738</u>	<u>\$ 79,013</u>	<u>\$ 82,453</u>

Combined summarized income statement information for our ventures accounted for using the equity method follows:

	Venture Revenues		Venture Earnings (Loss)		Our Share of Earnings (Loss)	
	First Quarter		First Quarter		First Quarter	
	2016	2015	2016	2015	2016	2015
(In thousands)						
242, LLC <sup>(b)</sup>	\$ —	\$ 5,331	\$ (300)	\$ 3,464	\$ (150)	\$ 1,766
CL Ashton Woods, LP <sup>(c)</sup>	696	1,350	367	527	439	678
CL Realty, LLC	133	279	47	160	23	80
CREA FMF Nashville LLC <sup>(b)</sup>	901	6	(571)	(113)	(171)	(113)
Elan 99, LLC	20	—	(410)	(2)	(369)	(2)
FMF Littleton LLC	321	—	(170)	—	(42)	—
FMF Peakview LLC	939	186	(248)	(482)	(50)	(96)
FOR/SR Forsyth LLC	—	—	—	—	—	—
HM Stonewall Estates, Ltd <sup>(c)</sup>	4,063	1,058	220	515	103	230
LM Land Holdings, LP <sup>(c)</sup>	1,000	1,976	640	1,250	144	364
MRECV DT Holdings LLC	98	—	98	—	88	—
MRECV Edelweiss LLC	87	—	87	—	78	—
MRECV Juniper Ridge LLC	3	—	3	—	3	—
MRECV Meadow Crossing II LLC	—	—	34	—	(31)	—
Miramonte Boulder Pass, LLC	—	—	(125)	—	(62)	—
PSW Communities, LP	—	2,427	—	195	—	173
Temco Associates, LLC	99	58	67	(1)	34	—
Other ventures <sup>(d)</sup>	—	3,701	26	(203)	10	(35)
	<u>\$ 8,360</u>	<u>\$ 16,372</u>	<u>\$ (235)</u>	<u>\$ 5,310</u>	<u>\$ 47</u>	<u>\$ 3,045</u>

- (a) Total includes current maturities of \$8,524,000 at first quarter-end 2016, of which \$6,320,000 is non-recourse to us, and \$39,590,000 at year-end 2015, of which \$6,798,000 is non-recourse to us.
- (b) Includes unamortized deferred gains on real estate contributed by us to ventures. We recognize deferred gains as income as real estate is sold to third parties. Deferred gains of \$1,496,000 are reflected as a reduction to our investment in unconsolidated ventures at first quarter-end 2016.
- (c) Includes unrecognized basis difference of \$30,000 which is reflected as a reduction of our investment in unconsolidated ventures at first quarter-end 2016. The difference will be accreted as income or expense over the life of the investment and included in our share of earnings (loss) from the respective ventures.
- (d) Our investment in other ventures reflects our ownership interests, excluding venture losses that exceed our investment where we are not obligated to fund those losses. Please read **Note 17—Variable Interest Entities** for additional information.

In first quarter 2016, we invested \$3,019,000 in these ventures and received \$2,871,000 in distributions. In first quarter 2015, we invested \$831,000 in these ventures and received \$3,500,000 in distributions. Distributions include both return of investments and distribution of earnings.

**Note 9—Receivables**

Receivables consist of:

	First Quarter-End 2016	Year-End 2015
	(In thousands)	
Funds held by qualified intermediary for potential 1031 like-kind exchange	\$ —	\$ 14,703
Oil and gas revenue accruals	2,374	3,745
Other receivables and accrued interest	5,244	2,448
Oil and gas joint interest billing receivables	777	867
Other loans secured by real estate, average interest rates of 12.52% at first quarter-end 2016 and 11.31% at year-end 2015	1,485	2,130
	9,880	23,893
Allowance for bad debts	(203)	(237)
	<u>\$ 9,677</u>	<u>\$ 23,656</u>

In first quarter 2016, we received funds previously held by a qualified intermediary because we did not complete an intended like-kind exchange related to a 2015 sale of 6,915 acres of undeveloped land.

Other loans secured by real estate generally are secured by a deed of trust and due within three years.

**Note 10—Debt**

Debt <sup>(a)</sup> consists of:

	First Quarter-End 2016	Year-End 2015
	(In thousands)	
8.50% senior secured notes due 2022	\$ 216,495	\$ 224,647
3.75% convertible senior notes due 2020, net of discount	105,798	104,719
6.00% tangible equity unit notes, net of discount	6,552	8,666
Secured promissory notes — average interest rates of 3.43% at first quarter-end 2016 and 3.42% at year-end 2015	15,400	15,400
Other indebtedness — interest rates ranging from 2.44% to 5.50%	28,514	28,083
	<u>\$ 372,759</u>	<u>\$ 381,515</u>

<sup>(a)</sup> At first quarter-end 2016 and year-end 2015, \$7,953,000 and \$8,267,000 of unamortized deferred financing fees are deducted from our outstanding debt.

Our debt agreements contain financial covenants customary for such agreements including minimum levels of interest coverage and limitations on leverage. On December 30, 2015, we amended our senior secured credit facility to reduce the interest coverage ratio from 2.50:1.0 to 2.25:1.0 for the quarter ending December 31, 2015 and March 31, 2016. Thereafter, the interest coverage ratio returns to 2.50:1.0. At first quarter-end 2016, we were in compliance with the financial covenants of these agreements.

At first quarter-end 2016, our senior secured credit facility provides for a \$300,000,000 revolving line of credit maturing May 15, 2017 (with two one-year extension options). The revolving line of credit may be prepaid at any time without penalty. The revolving line of credit includes a \$100,000,000 sublimit for letters of credit, of which \$15,817,000 is outstanding at first quarter-end 2016. Total borrowings under our senior secured credit facility (including the face amount of letters of credit) may not exceed a borrowing base formula. At first quarter-end 2016, we had \$265,199,000 in net unused borrowing capacity under our senior secured credit facility.

Under the terms of our senior secured credit facility, at our option we can borrow at LIBOR plus 4.0 percent or at the alternate base rate plus 3.0 percent. The alternate base rate is the highest of (i) KeyBank National Association's base rate, (ii) the federal funds effective rate plus 0.5 percent or (iii) 30 day LIBOR plus 1 percent. Borrowings under the senior secured credit facility are or may be secured by (a) mortgages on the timberland, high value timberland and portions of raw entitled land, as well as pledges of other rights including certain oil and gas operating properties, (b) assignments of current and future leases, rents and contracts, (c) a security interest in our primary operating account, (d) a pledge of the equity interests in current and future material operating subsidiaries and most of our majority-owned joint venture interests, or if such pledge is not

permitted, a pledge of the right to distributions from such entities, and (e) a pledge of certain reimbursements payable to us from special improvement district tax collections in connection with our Cibolo Canyons project. The senior secured credit facility provides for releases of real estate and other collateral provided that borrowing base compliance is maintained.

Our debt agreements contain financial covenants customary for such agreements including minimum levels of interest coverage and limitations on leverage. At first quarter-end 2016, our tangible net worth requirement was \$379,044,000 plus 85 percent of the aggregate net proceeds received by us from any equity offering, plus 75 percent of all positive net income, on a cumulative basis. At first quarter-end 2016, there were no adjustments to the tangible net worth requirement for net proceeds from equity offerings or positive net income on a cumulative basis. The tangible net worth requirement is recalculated on a quarterly basis.

We may elect to make distributions to stockholders so long as the total leverage ratio is less than 40 percent, the interest coverage ratio is greater than 3.0:1.0 and available liquidity is not less than \$125,000,000. Effective December 30, 2015, the senior secured credit facility was amended to provide that we may make distributions in an aggregate amount not to exceed \$50,000,000 to be funded from up to 65% of the net proceeds from sales of multifamily properties and non-core assets, such as the Radisson Hotel & Suites in Austin, and any oil and gas properties. The amendment provides us the flexibility to repurchase stock or pay a special dividend should our Board of Directors determine that we should do so, though no such decisions have been made at this time.

In first quarter 2016, we purchased \$8,600,000 principal amount of 8.50% Senior Secured Notes (Notes) at 99% of face value, resulting in a gain of \$127,000 on the early extinguishment of the Notes, offset by the write-off of unamortized debt issuance costs of \$225,000 allocated to the Notes.

At first quarter-end 2016, secured promissory notes represent a \$15,400,000 loan collateralized by a 413 guest room hotel located in Austin with a carrying value of \$33,415,000 classified as assets held for sale. Other indebtedness principally represents a \$23,936,000 of senior secured loan for our 257-unit multifamily project in Austin with a carrying value of \$50,527,000 classified as assets held for sale at first quarter-end 2016.

At first quarter-end 2016 and year-end 2015, we have \$7,953,000 and \$8,267,000 in unamortized deferred financing fees which are deducted from our debt. In addition, at first quarter-end 2016 and year-end 2015, unamortized deferred financing fees related to our senior secured credit facility included in other assets was \$2,264,000 and \$2,768,000. Amortization of deferred financing fees was \$927,000 and \$1,156,000 in first quarter 2016 and 2015 and is included in interest expense.

#### **Note 11—Fair Value**

Fair value is the exchange price that would be the amount received for an asset or paid to transfer a liability in an orderly transaction between market participants. In arriving at a fair value measurement, we use a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable. The three levels of inputs used to establish fair value are the following:

- Level 1 — Quoted prices in active markets for identical assets or liabilities;
- Level 2 — Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and
- Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

Non-financial assets measured at fair value on a non-recurring basis principally include real estate assets, oil and gas properties, assets held for sale, goodwill and other intangible assets, which are measured for impairment.

At first quarter-end 2016, Radisson Hotel & Suites in Austin, Eleven, a 257-unit multifamily property in Austin, Dillon, a planned 379-unit multifamily property in Charlotte, and certain oil and gas properties were classified as held for sale. We record impairment losses for assets held for sale if the fair value of the assets held for sale net of estimated selling costs is less than the carrying amount. In first quarter 2016, we did not record any impairment losses on our assets held for sale.

Non-financial assets measured at fair value on a non-recurring basis are as follows:

	First Quarter-End 2016				Year-End 2015			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
(In thousands)								
<b>Non-Financial Assets and Liabilities:</b>								
Real estate	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 641	\$ 641
Proved oil and gas properties	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 39,000	\$ 39,000
Unproved leasehold interests	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 18,219	\$ 18,219

We elected not to use the fair value option for cash and cash equivalents, accounts receivable, other current assets, variable debt, accounts payable and other current liabilities. The carrying amounts of these financial instruments approximate their fair values due to their short-term nature or variable interest rates. We determine the fair value of fixed rate financial instruments using quoted prices for similar instruments in active markets.

Information about our fixed rate financial instruments not measured at fair value follows:

	First Quarter-End 2016		Year-End 2015		Valuation Technique
	Carrying Amount	Fair Value	Carrying Amount	Fair Value	
	(In thousands)				
Fixed rate debt	\$ (336,298)	\$ (310,236)	\$ (346,090)	\$ (321,653)	Level 2

## Note 12—Capital Stock

Please read **Note 18—Share-Based and Long-Term Incentive Compensation** for information about additional shares of common stock that could be issued under terms of our share-based compensation plans.

At first quarter-end 2016, personnel of former affiliates held options to purchase 243,000 shares of our common stock. The options have a weighted average exercise price of \$30.27 and a weighted average remaining contractual term of less than one year. At first quarter-end 2016, the options have an aggregate intrinsic value of \$0.

## Note 13—Net Income (Loss) per Share

Basic and diluted earnings per share is computed using the two-class method. The two-class method is an earnings allocation formula that determines net income per share for each class of common stock and participating security. We have determined that our 6.00% tangible equity units (Units) are participating securities. Per share amounts are computed by dividing earnings available to common shareholders by the weighted average shares outstanding during each period. In periods with a net loss, no such adjustment is made to earnings as the holders of the participating securities have no obligation to fund losses.

[Table of Contents](#)

Due to a net loss in first quarter 2016 and 2015, as the effect of potentially dilutive securities would be anti-dilutive, basic and diluted loss per share are the same. The computations of basic and diluted earnings per share are as follows:

	First Quarter	
	2016	2015
	(In thousands)	
Numerator:		
Consolidated net income (loss)	\$ (4,296)	\$ (8,237)
Less: Net (income) loss attributable to noncontrolling interest	(80)	79
Earnings (loss) available for diluted earnings per share	\$ (4,376)	\$ (8,158)
Less: Undistributed net income allocated to participating securities	—	—
Earnings (loss) available to common shareholders for basic earnings per share	\$ (4,376)	\$ (8,158)
Denominator:		
Weighted average common shares outstanding — basic	34,302	34,168
Weighted average common shares upon conversion of participating securities	—	—
Dilutive effect of stock options, restricted stock and equity-settled awards	—	—
Total weighted average shares outstanding — diluted	34,302	34,168
Anti-dilutive awards excluded from diluted weighted average shares	10,468	10,743

The actual number of shares we may issue upon settlement of the stock purchase contract will be between 6,547,800 shares (the minimum settlement rate) and 7,857,000 shares (the maximum settlement rate) based on the applicable market value, as defined in the purchase contract agreement associated with issuance of the Units.

We intend to settle the principal amount of our convertible senior notes (Convertible Notes) in cash upon conversion with only the amount in excess of par value of the Convertible Notes to be settled in shares of our common stock. Therefore, our calculation of diluted net income per share using the treasury stock method includes only the amount, if any, in excess of par value of the Convertible Notes. As such, the Convertible Notes have no impact on diluted net income per share until the price of our common stock exceeds the \$24.49 conversion price of the Convertible Notes. The average price of our common stock in first quarter 2016 did not exceed the conversion price which resulted in no additional diluted outstanding shares.

#### Note 14—Income Taxes

Our effective tax rate was 38 percent in first quarter 2016, which includes a three percent benefit for a partial release of our valuation allowance and a five percent detriment for goodwill due to the sale of oil and gas assets. Our effective tax rate was 35 percent in first quarter 2015, which included a two percent benefit for noncontrolling interests and a two percent detriment for share-based compensation benefits that will not be realized. Our effective tax rates also include the effect of state income taxes, nondeductible items and benefits of percentage depletion.

At first quarter-end 2016 and year-end 2015, we have a valuation allowance for our deferred tax assets of \$95,389,000 and \$97,068,000 for the portion of the deferred tax assets that we have determined is more likely than not to be unrealizable.

In determining our valuation allowance, we assessed available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax asset. A significant piece of objective evidence evaluated was the cumulative loss incurred over the three-year period ended March 31, 2016, principally driven by impairments of oil and gas properties in 2015. Such evidence limits our ability to consider other subjective evidence, such as our projected future taxable income.

The amount of the deferred tax asset considered realizable could be adjusted if negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence, such as our projected future taxable income.

#### Note 15—Commitments and Contingencies

##### Litigation

We are involved in various legal proceedings that arise from time to time in the ordinary course of doing business and believe that adequate reserves have been established for any probable losses. We do not believe that the outcome of any of these proceedings should have a significant adverse effect on our financial position, long-term results of operations or cash flows. However, it is possible that charges related to these matters could be significant to our results or cash flows in any one accounting period.

## [Table of Contents](#)

On October 4, 2014, James Huffman, a former director and CEO of CREDO Petroleum Corporation (Credo), which we acquired in 2012 and is now known as Forestar Petroleum Corporation, filed *Huffman vs. Forestar Petroleum Corporation*, Case Number 14CV33811, Civil Division, District Court for the City and County of Denver, Colorado. Prior to his retirement from Credo, Huffman participated in an employee compensation program under which he received overriding royalty interests (ORRI) in certain leases or wells in which Credo had an interest. Huffman claims entitlement to ORRI on nearly all North Dakota leases, none of which were assigned by Credo to Huffman prior to his retirement, and to ORRI on several Kansas and Nebraska leases. Huffman is seeking to have ORRI assigned to him. We believe Huffman's claims are without merit and are vigorously defending the case. We are unable to estimate a possible loss or range of possible loss for this matter because of, among other factors, (i) significant unresolved questions of fact, including the time period covered by Huffman's claims, (ii) discovery remaining to be conducted by both parties; (iii) impact of our counterclaims against Huffman, and (iv) any other factors that may have a material effect on the litigation.

### **Environmental**

Environmental remediation liabilities arise from time to time in the ordinary course of doing business, and we believe we have established adequate reserves for any probable losses that we can reasonably estimate. We own 288 acres near Antioch, California, portions of which were sites of a former paper manufacturing operation that are in remediation. We have received certificates of completion on all but one 80 acre tract, a portion of which includes subsurface contamination. In first quarter 2016, we increased our reserves for environmental remediation by \$86,000 due to additional testing and remediation requirements by state regulatory agencies. We estimate the remaining cost to complete remediation activities will be \$678,000, which is included in other accrued expenses. It is possible that remediation or monitoring activities could be required in addition to those included within our estimate, but we are unable to determine the scope, timing or extent of such activities.

We have asset retirement obligations related to the abandonment and site restoration requirements that result from the acquisition, construction and development of oil and gas properties. We record the fair value of a liability for an asset retirement obligation in the period in which it is incurred and a corresponding increase in the carrying amount of the related long-lived asset. Accretion expense related to the asset retirement obligation and depletion expense related to capitalized asset retirement cost is included in cost of oil and gas producing activities. At first quarter-end 2016 and year-end 2015, our asset retirement obligation was \$974,000 and \$1,758,000, of which \$230,000 is included in liabilities held for sale at first quarter-end 2016 and the remaining balance in other liabilities.

### **Non-Core Assets Restructuring Costs**

In connection with key initiatives to reduce costs across our entire organization and exit non-core assets, we incurred and paid severance costs related to workforce reductions of \$1,422,000 in our real estate segment, \$164,000 in our other natural resources segment and \$486,000 in unallocated general and administrative expense. In addition, we offered retention bonuses to certain key personnel provided they remained our employees through completion of sale transactions. We are expensing retention bonus costs over the estimated retention period. These restructuring costs are included in other operating expense.

The following table summarizes activity related to liabilities associated with our restructuring activities in first quarter 2016:

	Severance Costs	Retention Bonuses	Total
	(In thousands)		
Balance at year-end 2015	\$ (1,049)	\$ —	\$ (1,049)
Additions	(2,072)	(491)	(2,563)
Payments	3,121	77	3,198
Balance at first quarter-end 2016	\$ —	\$ (414)	\$ (414)

### **Note 16—Segment Information**

We manage our operations through three segments: real estate, oil and gas and other natural resources. Real estate secures entitlements and develops infrastructure on our lands for single-family residential and mixed-use communities, and manages our undeveloped land, commercial and income producing properties, primarily a hotel and our multifamily investments. Oil and gas is an independent oil and gas exploration, development and production operation and manages our owned and leased mineral interests. Other natural resources manages our timber, recreational leases and water resource initiatives.

Total assets allocated by segment are as follows:

	First Quarter-End 2016	Year-End 2015
	(In thousands)	
Real estate	\$ 666,726	\$ 691,238
Oil and gas	97,346	144,436
Other natural resources	19,025	19,106
Assets not allocated to segments <sup>(a)</sup>	164,955	117,466
	<u>\$ 948,052</u>	<u>\$ 972,246</u>

<sup>(a)</sup> Assets not allocated to segments at first quarter-end 2016 principally consist of cash and cash equivalents of \$142,646,000 and an income tax receivable of \$14,359,000. Assets not allocated to segments at year-end 2015 principally consist of cash and cash equivalents of \$96,442,000 and an income tax receivable of \$12,056,000.

We evaluate performance based on segment earnings (loss) before unallocated items and income taxes. Segment earnings (loss) consist of operating income, equity in earnings (loss) of unconsolidated ventures, gain on sales of assets, interest income on loans secured by real estate and net (income) loss attributable to noncontrolling interests. Items not allocated to our business segments consist of general and administrative expense, share-based and long-term incentive compensation, gain on sale of strategic timberland, interest expense and other corporate non-operating income and expense. The accounting policies of the segments are the same as those described in **Note 1—Basis of Presentation**. Our revenues are derived from U.S. operations and all of our assets are located in the U.S. In first quarter 2016, no single customer accounted for more than ten percent of our total revenues.

Segment revenues and earnings are as follows:

	First Quarter	
	2016	2015
	(In thousands)	
<b>Revenues:</b>		
Real estate	\$ 36,098	\$ 32,830
Oil and gas	5,352	13,185
Other natural resources	438	1,790
Total revenues	<u>\$ 41,888</u>	<u>\$ 47,805</u>
<b>Segment earnings (loss):</b>		
Real estate	\$ 20,224	\$ 9,066
Oil and gas	(12,441)	(2,941)
Other natural resources	(581)	(391)
Total segment earnings (loss)	7,202	5,734
Items not allocated to segments <sup>(a)</sup>	(14,204)	(18,251)
Income (loss) before taxes attributable to Forestar Group Inc.	<u>\$ (7,002)</u>	<u>\$ (12,517)</u>

<sup>(a)</sup> Items not allocated to segments consist of:

	First Quarter	
	2016	2015
	(In thousands)	
General and administrative expense	\$ (4,973)	\$ (6,020)
Shared-based and long-term incentive compensation expense	(1,544)	(3,458)
Interest expense	(7,639)	(8,821)
Other corporate non-operating income	(48)	48
	<u>\$ (14,204)</u>	<u>\$ (18,251)</u>



# **Note 17—Variable Interest Entities**

We participate in real estate ventures for the purpose of acquiring and developing residential, multifamily and mixed-use communities in which we may or may not have a controlling financial interest. Generally accepted accounting principles require consolidation of Variable Interest Entities (VIEs) in which an enterprise has a controlling financial interest and is the primary beneficiary. A controlling financial interest will have both of the following characteristics: (a) the power to direct the VIE activities that most significantly impact economic performance and (b) the obligation to absorb the VIE losses and right to receive benefits that are significant to the VIE. We examine specific criteria and use judgment when determining whether we are the primary beneficiary and must consolidate a VIE. We perform this review initially at the time we enter into venture agreements and continuously reassess to see if we are the primary beneficiary of a VIE.

At first quarter-end 2016, we have one VIE. We account for this VIE using the equity method since we are not the primary beneficiary. Although we have certain rights regarding major decisions, we do not have the power to direct the activities that are most significant to the economic performance of the VIE. At first quarter-end 2016, the VIE has total assets of \$4,161,000, substantially all of which represent developed and undeveloped real estate, and total liabilities of \$2,208,000, which includes \$2,203,000 of borrowings classified as current maturities. These amounts are included in the summarized balance sheet information for ventures accounted for using the equity method in **Note 8—Investment in Unconsolidated Ventures**. At first quarter-end 2016, our investment in the VIE is \$1,558,000 and is included in investment in unconsolidated ventures. In first quarter 2016, we contributed \$44,000 to this VIE. Our maximum exposure to loss related to the VIE is \$3,766,000, which exceeds our investment as we have a nominal general partner interest and could be held responsible for its liabilities. The maximum exposure to loss represents the maximum loss that we could be required to recognize assuming all the ventures' assets (principally real estate) are worthless, without consideration of the probability of a loss or of any actions we may take to mitigate any such loss.

# **Note 18—Share-Based and Long-Term Incentive Compensation**

Share-based and long-term incentive compensation expense consists of:

	First Quarter	
	2016	2015
	(In thousands)	
Cash-settled awards	\$ 619	\$ 296
Equity-settled awards	479	1,997
Restricted stock	6	17
Stock options	276	1,032
Total share-based compensation	1,380	3,342
Deferred cash	164	116
	<u>\$ 1,544</u>	<u>\$ 3,458</u>

Share-based and long-term incentive compensation expense is included in:

	First Quarter	
	2016	2015
	(In thousands)	
General and administrative expense	\$ 1,506	\$ 2,122
Other operating expense	38	1,336
	<u>\$ 1,544</u>	<u>\$ 3,458</u>

### ***Share-Based Compensation***

In first quarter 2016, we granted 174,419 equity-settled awards to employees in the form of restricted stock units which vest ratably over three years and provide for accelerated vesting upon retirement, disability, death, or if there is a change in control. In addition, in first quarter 2016, we granted 69,760 restricted stock units to our board of directors which vest 25 percent at grant date and 25 percent at each subsequent quarterly board meeting and a stock option grant to acquire 20,000 shares of common stock for each of the two new directors, of which 6,500 shares vest on the first and second anniversary of the date of grant and the remaining 7,000 shares vest on the third anniversary of the date of grant. The option term is ten years. Expense associated with annual restricted stock units and non-qualified stock options to our board of directors is included in share-based compensation expense.

Excluded from share-based compensation expense in the table above are fees earned by our board of directors in the amount of \$265,000 and \$285,000 in first quarter 2016 and 2015 for which they elected to defer payment until retirement in the form of share-settled units. These expenses are included in general and administrative expense.

The fair value of awards granted to retirement eligible employees expensed at the date of grant was \$600,000 and \$517,000 in first quarter 2016 and 2015. Unrecognized share-based compensation expense related to non-vested equity-settled awards, restricted stock and stock options is \$3,879,000 at first quarter-end 2016.

In first quarter 2016 and 2015, we issued 165,167 and 157,201 shares out of our treasury stock associated with vesting of stock-based awards or exercise of stock options, net of 23,691 and 48,636 shares withheld having a value of \$205,000 and \$723,000 for payroll taxes in connection with vesting of stock-based awards or exercise of stock options.

### ***Long-Term Incentive Compensation***

In first quarter 2016 and 2015, we granted \$620,000 and \$587,000 of long-term incentive compensation in the form of deferred cash compensation. The 2016 deferred cash awards vest annually over two years, and the 2015 deferred cash awards vest after three years. Both awards provide for accelerated vesting upon retirement, disability, death, or if there is a change in control. Expense associated with deferred cash awards is recognized ratably over the vesting period. The accrued liability was \$319,000 and \$225,000 at first quarter-end 2016 and year-end 2015 and is included in other liabilities.

### **Note 19—Subsequent Events**

On April 18, 2016, we sold Eleven, a 257-unit multifamily project in Austin for \$60,150,000. The transaction generated net proceeds of \$35,150,000 after closing costs and prorations and payoff of the related debt of \$23,936,000.

On May 4, 2016, we sold Radisson Hotel & Suites in Austin for \$130,000,000. The transaction generated net proceeds of \$112,000,000 after closing costs and prorations and payoff of the related debt of \$15,400,000.

On May 6, 2016, we sold our remaining Bakken/Three Forks oil and gas properties for \$50,000,000. Net proceeds after closing costs and prorations were \$46,525,000. In second quarter 2016, we expect to incur an additional loss related to this transaction due to allocation of goodwill on a relative fair value basis to these assets. With this transaction, we have completely exited our oil and gas working interest assets in North Dakota.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations in our 2015 Annual Report on Form 10-K. Unless otherwise indicated, information is presented as of first quarter-end 2016, and references to acreage owned includes all acres owned by ventures regardless of our ownership interest in a venture.

**Forward-Looking Statements**

This Quarterly Report on Form 10-Q and other materials we have filed or may file with the Securities and Exchange Commission contain "forward-looking statements" within the meaning of the federal securities laws. These forward-looking statements are identified by their use of terms and phrases such as "believe," "anticipate," "could," "estimate," "likely," "intend," "may," "plan," "expect," and similar expressions, including references to assumptions. These statements reflect our current views with respect to future events and are subject to risks and uncertainties. We note that a variety of factors and uncertainties could cause our actual results to differ significantly from the results discussed in the forward-looking statements. Factors and uncertainties that might cause such differences include, but are not limited to:

- general economic, market or business conditions in Texas or Georgia, where our real estate activities are concentrated, or on a national or global scale;
- our ability to achieve some or all of our key initiatives;
- the opportunities (or lack thereof) that may be presented to us and that we may pursue;
- our ability to hire and retain key personnel;
- future residential or commercial entitlements, development approvals and the ability to obtain such approvals;
- obtaining approvals of reimbursements and other payments from special improvement districts and the timing of such payments;
- accuracy of estimates and other assumptions related to investment in and development of real estate, the expected timing and pricing of land and lot sales and related cost of real estate sales, impairment of long-lived assets, income taxes, share-based compensation, oil and gas reserves, revenues, capital expenditures and lease operating expense accruals associated with our non-core oil and gas working interests, and depletion of our non-core oil and gas properties;
- the levels of resale housing inventory in our mixed-use development projects and the regions in which they are located;
- fluctuations in costs and expenses, including impacts from shortages in materials or labor;
- demand for new housing, which can be affected by a number of factors including the availability of mortgage credit, job growth and fluctuations in commodity prices;
- demand for multifamily communities, which can be affected by a number of factors including local markets and economic conditions;
- competitive actions by other companies;
- changes in governmental policies, laws or regulations and actions or restrictions of regulatory agencies;
- risks associated with oil and gas exploration, drilling and production activities;
- fluctuations in oil and gas commodity prices;
- government regulation of exploration and production technology, including hydraulic fracturing;
- our ability to make interest and principal payments on our debt or amend and satisfy the other covenants contained in our senior secured credit facility, indentures and other debt agreements;
- our partners' ability to fund their capital commitments and otherwise fulfill their operating and financial obligations;
- the effect of limitations, restrictions and natural events on our ability to harvest and deliver timber;
- inability to obtain permits for, or changes in laws, governmental policies or regulations affecting, water withdrawal or usage;
- the final resolutions or outcomes with respect to our contingent and other liabilities related to our business.

Other factors, including the risk factors described in Item 1A of our 2015 Annual Report on Form 10-K, may also cause actual results to differ materially from those projected by our forward-looking statements. New factors emerge from time to time and it is not possible for us to predict all such factors, nor can we assess the impact of any such factor on our business or

[Table of Contents](#)

the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statement.

Any forward-looking statement speaks only as of the date on which such statement is made, and, except as required by law, we expressly disclaim any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events.

**Key Initiatives**

- Reducing costs across our entire organization;
- Reviewing entire portfolio of assets;
- Reviewing capital structure; and
- Providing additional information.

**Results of Operations**

A summary of our consolidated results by business segment follows:

	First Quarter	
	2016	2015
	(In thousands)	
Revenues:		
Real estate	\$ 36,098	\$ 32,830
Oil and gas	5,352	13,185
Other natural resources	438	1,790
Total revenues	\$ 41,888	\$ 47,805
Segment earnings (loss):		
Real estate	\$ 20,224	\$ 9,066
Oil and gas	(12,441)	(2,941)
Other natural resources	(581)	(391)
Total segment earnings (loss)	7,202	5,734
Items not allocated to segments:		
General and administrative expense	(4,973)	(6,020)
Share-based and long-term incentive compensation expense	(1,544)	(3,458)
Interest expense	(7,639)	(8,821)
Other corporate non-operating income	(48)	48
Income (loss) before taxes	(7,002)	(12,517)
Income tax benefit	2,626	4,359
Net loss attributable to Forestar Group Inc.	\$ (4,376)	\$ (8,158)

Significant aspects of our results of operations follow:

***First Quarter 2016***

- First quarter 2016 real estate segment earnings benefited from a \$9,613,000 gain associated with the sale of our interest in the 360°, a 304-unit multifamily joint venture in Denver, and a \$3,968,000 gain associated with sale of Music Row, a wholly-owned multifamily property under construction in Nashville, both as result of our announced plan to opportunistically exit our multifamily portfolio of assets.
- First quarter 2016 oil and gas segment results were down compared with first quarter 2015 due to a \$10,977,000 loss associated with the sale of non-core oil and gas properties principally located in Oklahoma, Kansas, Nebraska and North Dakota as a result of our announced plan to exit non-core oil and gas working interests.

**Current Market Conditions**

New U.S. single-family home starts ended March 2016 at 764,000 on a seasonally adjusted basis, nearly 23 percent above year-ago levels but below historical levels. Inventories of new homes are near historically low levels in many areas. In addition, declining finished lot inventories and limited supply of economically developable raw land has increased demand for our developed lots. However, national and global economic weakness and uncertainty, and a restrictive mortgage lending environment continue to threaten a robust recovery in the housing market, despite low interest rates. Multifamily market conditions continue to be strong, with many markets experiencing healthy occupancy levels and positive rent growth. This improvement has been driven primarily by limited housing inventory, reduced single-family mortgage credit availability, and the increased propensity to rent among the 18 to 34 year old demographic of the U.S. population.

Global supply and demand fundamentals for crude oil at the end of March 2016 remained out of balance with high global and domestic inventories and slower global growth. West Texas Intermediate (WTI) oil prices averaged \$33.18 per Bbl in first quarter 2016, nearly 32 percent lower than in first quarter 2015. Estimates for global demand growth continue to be tempered and could extend the global supply glut, resulting in an extended period of low crude oil pricing. Henry Hub natural gas prices in first quarter 2016 averaged \$2.00/MMBtu, 31 percent lower than first quarter 2015 and the lowest first quarter average since 1999. Natural gas inventories ended winter withdrawal above the previous end of March record high in 2012 due to warmer-than-normal temperatures and continued high production volumes.

**Business Segments**

We manage our operations through three business segments:

- Real estate,
- Oil and gas, and
- Other natural resources.

We evaluate performance based on segment earnings (loss) before unallocated items and income taxes. Segment earnings (loss) consist of operating income, equity in earnings (loss) of unconsolidated ventures, gain on sales of assets, interest income on loans secured by real estate and net (income) loss attributable to noncontrolling interests. Items not allocated to our business segments consist of general and administrative expense, share-based and long-term incentive compensation, gain on sale of strategic timberland, interest expense and other corporate non-operating income and expense. The accounting policies of the segments are the same as those described in the accounting policy note to the consolidated financial statements.

We operate in cyclical industries. Our operations are affected to varying degrees by supply and demand factors and economic conditions including changes in interest rates, availability of mortgage credit, consumer and home builder sentiment, new housing starts, real estate values, employment levels, changes in the market prices for oil, gas and timber, and the overall strength or weakness of the U.S. economy.

***Real Estate***

We own directly or through ventures interests in 57 residential and mixed-use projects comprised of 7,000 acres of real estate located in 11 states and 15 markets. Our real estate segment secures entitlements and develops infrastructure on our lands, primarily for single-family residential and mixed-use communities. We own approximately 87,000 acres of non-core timberland and undeveloped land in a broad area around Atlanta, Georgia, with the balance located primarily in Texas. We own and manage our projects either directly or through ventures. Our real estate segment revenues are principally derived from the sales of residential single-family lots and tracts, undeveloped land and commercial real estate and from the operation of income producing properties, primarily a hotel and multifamily properties.

[Table of Contents](#)

A summary of our real estate results follows:

	First Quarter	
	2016	2015
	(In thousands)	
Revenues	\$ 36,098	\$ 32,830
Cost of sales	(18,424)	(18,054)
Operating expenses	(11,088)	(9,602)
	6,586	5,174
Interest income	122	869
Gain on sale of assets	13,581	—
Equity in earnings of unconsolidated ventures	15	2,944
Less: Net (income) loss attributable to noncontrolling interests	(80)	79
Segment earnings	\$ 20,224	\$ 9,066

Revenues in our owned and consolidated ventures consist of:

	First Quarter	
	2016	2015
	(In thousands)	
Residential real estate	\$ 17,045	\$ 18,322
Commercial real estate	2,655	1,377
Undeveloped land	5,703	2,015
Commercial and income producing properties	9,690	10,869
Other	1,005	247
	\$ 36,098	\$ 32,830

Residential real estate revenues principally consist of the sale of single-family lots to local, regional and national homebuilders. Residential lot sales volume in first quarter 2016 was comparable with first quarter 2015, however, average price per lot sold was down 8 percent. Commercial real estate revenues principally consist of the sale of tracts to commercial developers that specialize in the construction and operation of income producing properties such as apartments, retail centers, or office buildings.

In first quarter 2016, we sold 1,972 acres of undeveloped land for \$5,703,000, or approximately \$2,892 per acre, generating approximately \$4,314,000 in segment earnings, as compared with 731 acres sold for \$2,015,000 or approximately \$2,758 per acre, generating approximately \$1,364,000 in segment earnings in first quarter 2015.

Commercial and income producing properties revenue includes revenues from hotel room sales and other guest services, rental revenues from our operating multifamily properties and reimbursement for costs paid to subcontractors plus development and construction fees from certain multifamily projects. First quarter 2016 and 2015 includes \$199,000 and \$2,029,000 in construction revenues associated with one multifamily joint venture fixed fee contract as general contractor. The construction of this multifamily joint venture project was completed in first quarter 2016. Development fee revenues in first quarter 2016 and 2015 were \$1,298,000 and \$407,000. The increase in development fee revenues in first quarter 2016 was related to contingent development fee earned on the 360° multifamily venture project upon completion of construction in accordance with the joint venture agreement. Rental revenues from our multifamily operating properties for first quarter 2016 and 2015 were \$1,313,000 and \$1,762,000. The decrease in rental revenues from our multifamily operating properties in first quarter 2016 when compared with first quarter 2015 was primarily due to the fourth quarter 2015 sale of Midtown Cedar Hill, a 354-unit multifamily property we developed near Dallas. Revenues from hotel room sales and other guest services were \$6,880,000 and \$6,672,000 in first quarter 2016 and 2015.

The increase in other revenues in first quarter 2016 is primarily associated with easement revenues associated with our undeveloped land.

[Table of Contents](#)

Units sold consist of:

	First Quarter	
	2016	2015
<b>Owned and consolidated ventures:</b>		
Residential lots sold	248	242
Revenue per lot sold	\$ 68,696	\$ 73,064
Commercial acres sold	8	4
Revenue per commercial acre sold	\$ 331,033	\$ 329,863
Undeveloped acres sold	1,972	731
Revenue per acre sold	\$ 2,892	\$ 2,758
<b>Ventures accounted for using the equity method:</b>		
Residential lots sold	36	47
Revenue per lot sold	\$ 81,643	\$ 92,551
Commercial acres sold	—	29
Revenue per commercial acre sold	\$ —	\$ 312,237
Undeveloped acres sold	—	—
Revenue per acre sold	\$ —	\$ —

Cost of sales in first quarter 2016 and 2015 include \$526,000 and \$2,434,000 related to multifamily construction contract costs we incurred as general contractor and paid to subcontractors associated with our development of a multifamily venture property near Denver which was completed in first quarter 2016. Included in multifamily construction contract costs are charges of \$327,000 and \$405,000 in first quarter 2016 and 2015 reflecting estimated cost increases associated with our fixed fee contracts as general contractor. Cost of sales in first quarter 2015 also includes \$504,000 of non-cash asset impairment charges associated with a residential development with golf course and country club property located near Fort Worth which was sold in April 2015.

Operating expenses consist of:

	First Quarter	
	2016	2015
	(In thousands)	
Employee compensation and benefits	\$ 3,687	\$ 2,299
Property taxes	2,027	2,114
Professional services	1,205	1,434
Depreciation and amortization	856	1,724
Other	3,313	2,031
	<u>\$ 11,088</u>	<u>\$ 9,602</u>

The increase in employee compensation and benefits expense in first quarter 2016 is principally related to \$1,422,000 of severance costs incurred as a result of our key initiatives to reduce costs across our entire organization and classifying our multifamily portfolio as non-core and our announced plan to exit these assets. The decrease in depreciation and amortization in first quarter 2016 is primarily due to the fourth quarter 2015 sale of Midtown Cedar Hill multifamily project, full amortization of in-place leases associated with Eleven multifamily project and discontinuing depreciation of the Radisson Hotel & Suites and Eleven multifamily project due to first quarter 2016 classification as assets held for sale. Other operating expense in first quarter 2016 includes \$1,058,000 of pre-acquisition costs related to multifamily projects that we no longer intend to pursue.

Interest income principally represents earnings from a loan secured by a mixed-use real estate community in Houston that was paid in full in first quarter 2015 and interest income received on reimbursements from utility and improvement districts.

Gain on sale of assets in first quarter 2016 includes a gain of \$9,613,000 related to sale of our interest in 360°, a 304-unit multifamily joint venture in Denver for \$13,917,000, of which \$750,000 was held in escrow and the gain deferred until completion of certain construction related post-closing obligations and \$3,968,000 gain associated with sale of Music Row, a wholly-owned multifamily property under construction in Nashville for \$14,703,000, both as a result of our announced plan to opportunistically exit our multifamily portfolio of assets.

Decrease in equity earnings from our unconsolidated ventures in first quarter 2016 compared with first quarter 2015 is primarily due to lower residential lot sales and no commercial real estate sales activity.

[Table of Contents](#)

We underwrite development projects based on a variety of assumptions incorporated into our development plans, including the timing and pricing of sales and leasing and costs to complete development. Our development plans are periodically reviewed in comparison to our return projections and expectations, and we may revise our plans as business conditions warrant. If as a result of changes to our development plans the anticipated future net cash flows are reduced such that our basis in a project is not fully recoverable, we may be required to recognize a non-cash impairment charge for such project.

Our net investment in owned and consolidated real estate by geographic location follows:

<u>State</u>	<b>Entitled, Developed, and Under Development Projects</b>	<b>Undeveloped Land and Land in Entitlement Process</b>	<b>Commercial and Income Producing Properties</b>	<b>Total</b>
<b>(In thousands)</b>				
Texas	\$ 264,766	\$ 5,710	\$ 22,109	\$ 292,585
Georgia	5,383	65,753	—	71,136
California	8,915	25,033	—	33,948
North & South Carolina	12,509	135	—	12,644
Colorado	24,040	6	—	24,046
Tennessee	15,524	—	—	15,524
Other	21,232	238	—	21,470
	<u>\$ 352,369</u>	<u>\$ 96,875</u>	<u>\$ 22,109</u>	<u>\$ 471,353</u>

**Oil and Gas**

Our oil and gas segment is focused on maximizing the value from our owned oil and gas mineral interests through promoting exploration, development and production activities by increasing acreage leased, lease rates and royalty interests.

We lease portions of our 590,000 owned net mineral acres located principally in Texas, Louisiana, Georgia and Alabama to other oil and gas companies in return for a lease bonus, delay rentals and a royalty interest. At first quarter-end 2016, we have about 15,000 net acres leased to others, about 40,000 net acres leased to others that are held by production related to our owned mineral interests and 533 gross wells operated by others on our owned mineral acres.

In addition, we are focused on exiting our non-core working interest oil and gas assets, principally in the Bakken/Three Forks of North Dakota and Lansing - Kansas City formation of Nebraska and Kansas. In first quarter 2016, we sold our remaining Nebraska and Kansas oil and gas properties for \$21,000,000 and sold certain oil and gas properties in North Dakota for \$9,499,000 which includes \$3,269,000 in reimbursement of capital costs incurred on in-progress wells that were assumed by the buyer. On May 6, 2016 we sold our our remaining Bakken/Three Forks oil and gas properties for \$50,000,000. Net proceeds after purchase price adjustments were \$46,525,000 and with the close of this transaction we have completely exited our oil and gas working interests in North Dakota.

A summary of our oil and gas results follows:

	<b>First Quarter</b>	
	<b>2016</b>	<b>2015</b>
<b>(In thousands)</b>		
Revenues	\$ 5,352	\$ 13,185
Cost of oil and gas producing activities	(5,194)	(11,542)
Operating expenses	(1,654)	(5,856)
	(1,496)	(4,213)
Gain (loss) on sale of assets	(10,977)	1,176
Equity in earnings of unconsolidated ventures	32	96
Segment earnings (loss)	<u>\$ (12,441)</u>	<u>\$ (2,941)</u>



[Table of Contents](#)

Revenues consist of:

	First Quarter	
	2016	2015
	(In thousands)	
Oil production <sup>(a)</sup>	\$ 4,522	\$ 11,304
Gas production	749	1,516
Other (principally lease bonus and delay rentals)	81	365
	<u>\$ 5,352</u>	<u>\$ 13,185</u>

(a) Oil production includes revenues from oil, condensate and natural gas liquids (NGLs).

In first quarter 2016, oil and gas production revenues decreased principally as a result of lower oil and gas prices and lower production volumes due to selling producing oil and gas properties as result of our exiting non-core working interest assets. The decline in oil prices negatively impacted revenues by \$2,623,000 and the decline in oil volumes negatively impacted revenues by \$4,160,000 in first quarter 2016 when compared with first quarter 2015. The decline in gas prices negatively impacted revenues by \$303,000 and the decline in gas production volumes negatively impacted revenues by \$463,000 in first quarter 2016 when compared with first quarter 2015.

Other revenues include \$74,000 in lease bonuses received from leasing 366 net mineral acres owned in Texas and Louisiana in first quarter 2016 compared with \$279,000 lease bonus revenues received from leasing 800 net mineral acres in Texas and Louisiana in first quarter 2015.

Cost of oil and gas producing activities consists of:

	First Quarter	
	2016	2015
	(In thousands)	
Depletion and amortization	\$ 1,752	\$ 7,204
Production costs	3,329	4,102
Exploration costs	42	168
Non-cash impairment of proved oil and gas properties and unproved leasehold interests	—	7
Other	71	61
	<u>\$ 5,194</u>	<u>\$ 11,542</u>

Cost of oil and gas producing activities decreased in first quarter 2016 when compared with first quarter 2015 primarily due to lower depletion and amortization expense as a result of our key initiatives to exit non-core oil and gas properties and lower basis due to previously recorded non-cash impairment charges. Depletion and amortization represent non-cash costs of producing oil and gas associated with our working interests and is computed based on the units of production method.

Exploration costs principally represent exploratory dry hole costs, geological and geophysical and seismic study costs.

Production costs principally represent lease operating expenses associated with producing working interest wells and our share of production severance taxes related to both our royalty and working interests.

[Table of Contents](#)

Oil and gas produced and average unit prices related to our royalty and working interests follows:

	First Quarter	
	2016	2015
<b>Consolidated entities:</b>		
Oil production (barrels)	162,000	269,900
Average oil price per barrel	\$ 26.86	\$ 40.18
NGL production (barrels)	23,600	23,700
Average NGL price per barrel	\$ 7.22	\$ 19.28
Total oil production (barrels), including NGLs	185,600	293,600
Average total oil price per barrel, including NGLs	\$ 24.36	\$ 38.50
Gas production (millions of cubic feet)	382.4	478.1
Average price per thousand cubic feet	\$ 1.96	\$ 3.17
<b>Our share of ventures accounted for using the equity method:</b>		
Gas production (millions of cubic feet)	37.3	42.3
Average price per thousand cubic feet	\$ 1.78	\$ 3.30
<b>Total consolidated and our share of equity method ventures:</b>		
Oil production (barrels)	162,000	269,900
Average oil price per barrel	\$ 26.86	\$ 40.18
NGL production (barrels)	23,600	23,700
Average NGL price per barrel	\$ 7.22	\$ 19.28
Total oil production (barrels), including NGLs	185,600	293,600
Average total oil price per barrel, including NGLs	\$ 24.36	\$ 38.50
Gas production (millions of cubic feet)	419.7	520.4
Average price per thousand cubic feet	\$ 1.94	\$ 3.18
Total BOE (barrel of oil equivalent) <sup>(a)</sup>	255,600	380,400
Average price per barrel of oil equivalent	\$ 20.89	\$ 34.07

(a) Gas is converted to barrels of oil equivalent (BOE) using a conversion of six Mcf to one barrel of oil.

Operating expenses consist of:

	First Quarter	
	2016	2015
	(In thousands)	
Employee compensation and benefits	\$ 827	\$ 2,621
Professional and consulting services	414	707
Depreciation	85	211
Other	328	2,317
	\$ 1,654	\$ 5,856

The decrease in operating expenses in first quarter 2016 compared with first quarter 2015 is primarily due to our key initiative to reduce costs across our entire organization and corresponding reduction in our workforce. First quarter 2015 operating expenses includes \$1,750,000 for a lease termination charge associated with closing our office in Fort Worth, Texas and \$1,068,000 of employee severance and retention costs.

In first quarter 2016, we recorded a net loss of \$10,977,000 on the sale of 190,960 mineral acres leased from others and 185 gross (66 net) producing oil and gas wells primarily in Nebraska, Kansas, Oklahoma and North Dakota for total sales proceeds of \$32,227,000. A significant portion of the net loss on sale, \$7,244,000, is related to write-off of allocated goodwill to sold producing oil and gas properties. In first quarter 2015, we recorded a gain of \$1,176,000 related to the sale of 290 net mineral acres leased from others in North Dakota for approximately \$2,000,000.

### Other Natural Resources

Our other natural resources segment manages our timber holdings, recreational leases and water resource initiatives. At first quarter-end 2016, we have about 87,000 real estate acres with timber we own directly or through ventures, primarily in Georgia and Texas. Our other natural resources segment revenues are principally derived from the sales of wood fiber from our land and leases for recreational uses. We have water interests in approximately 1.5 million acres, including a 45 percent nonparticipating royalty interest in groundwater produced or withdrawn for commercial purposes or sold from 1.4 million acres in Texas, Louisiana, Georgia and Alabama, and approximately 20,000 acres of groundwater leases in central Texas.

A summary of our other natural resources results follows:

	First Quarter	
	2016	2015
	(In thousands)	
Revenues	\$ 438	\$ 1,790
Cost of sales	(385)	(920)
Operating expenses	(634)	(1,266)
	(581)	(396)
Equity in earnings of unconsolidated ventures	—	5
Segment earnings (loss)	<u>\$ (581)</u>	<u>\$ (391)</u>

Revenues consist of:

	First Quarter	
	2016	2015
	(In thousands)	
Fiber	\$ 151	\$ 1,245
Water	—	100
Recreational leases and other	287	445
	<u>\$ 438</u>	<u>\$ 1,790</u>

Fiber sold consists of:

	First Quarter	
	2016	2015
Pulpwood tons sold	5,300	27,500
Average pulpwood price per ton	\$ 8.73	\$ 8.63
Sawtimber tons sold	3,200	20,100
Average sawtimber price per ton	\$ 21.02	\$ 21.50
Total tons sold	8,500	47,600
Average stumpage price per ton <sup>(a)</sup>	\$ 13.30	\$ 14.07

<sup>(a)</sup> Average stumpage price per ton is based on gross revenues less cut and haul costs.

Water revenues are associated with a groundwater reservation agreement with Hays County, Texas, which commenced in 2013 and was terminated in second quarter 2015.

Information about our recreational leases follows:

	First Quarter	
	2016	2015
Average recreational acres leased	87,500	109,700
Average price per leased acre	\$ 9.39	\$ 8.66

Cost of sales principally includes non-cash cost of timber cut and sold and delay rental payments paid to others related to groundwater leases in central Texas.

[Table of Contents](#)

Operating expenses consist of:

	First Quarter	
	2016	2015
	(In thousands)	
Employee compensation and benefits	\$ 301	\$ 683
Professional and consulting services	211	349
Other	122	234
	<u>\$ 634</u>	<u>\$ 1,266</u>

The decrease in operating expenses in first quarter 2016 when compared with first quarter 2015 is primarily due to our key initiative to reduce costs across entire organization and corresponding reduction in our workforce. Employee compensation and benefits includes \$164,000 in severance costs incurred in first quarter 2016. Operating expenses associated with our water resources initiatives for first quarter 2016 and 2015 were \$297,000 and \$750,000.

#### ***Items Not Allocated to Segments***

Unallocated items represent income and expenses managed on a company-wide basis and include general and administrative expenses, share-based and long-term incentive compensation, interest expense and other corporate non-operating income and expense. General and administrative expenses principally consist of accounting and finance, tax, legal, human resources, internal audit, information technology and our board of directors. These functions support all of our business segments and are not allocated.

#### ***General and administrative expense***

General and administrative expenses consist of:

	First Quarter	
	2016	2015
	(In thousands)	
Employee compensation and benefits	\$ 2,585	\$ 2,208
Professional and consulting services	946	1,668
Facility costs	230	233
Depreciation and amortization	119	181
Insurance costs	186	151
Other	907	1,579
	<u>\$ 4,973</u>	<u>\$ 6,020</u>

The decrease in general and administrative expense in first quarter 2016 when compared with first quarter 2015 is primarily due to our key initiative to reduce costs across entire organization. Employee compensation and benefits includes \$486,000 in severance costs incurred in first quarter 2016.

#### ***Share-based and long-term incentive compensation expense***

Our share-based compensation expense principally fluctuates due to a portion of our awards being cash-settled and as a result are affected by changes in market price of our common stock. The decrease in share-based compensation expense in first quarter 2016 when compared with first quarter 2015 is primarily due to decrease in new grants awarded to employees, decrease in annual restricted stock grants to our Board of Directors and decrease in value of cash-settled awards paid in first quarter 2016 due to decrease in market price of our common stock by over 20 percent from year-end 2015 to settlement date. These decreases were somewhat offset by an increase of over 19 percent in our stock price since year-end 2015 and its impact on cash-settled awards.

#### ***Interest expense***

The decrease in interest expense in first quarter 2016 when compared with first quarter 2015 is primarily due to decrease in debt outstanding associated with retirement of \$8,600,000 and \$19,440,000 of 8.50% Senior Secured Notes (Notes) in first quarter 2016 and fourth quarter 2015 and due to our payment in full of a \$24,166,000 loan secured by Midtown Cedar Hill, which we sold in fourth quarter 2015. First quarter 2016 debt retirement resulted in a gain of \$127,000

on early extinguishment, offset by the write-off of unamortized debt issuance costs of \$225,000 allocated to the Notes. Net loss on early extinguishment of debt was \$98,000 in first quarter 2016 which is reported in other non-operating income.

### ***Income Taxes***

Our effective tax rate was 38 percent in first quarter 2016, which includes a three percent benefit for a partial release of our valuation allowance and a five percent detriment for goodwill due to the sale of oil and gas assets. Our effective tax rate was 35 percent in first quarter 2015, which included a two percent benefit for noncontrolling interests and a two percent detriment for share-based compensation benefits that will not be realized. Our effective tax rates also include the effect of state income taxes, nondeductible items and benefits of percentage depletion.

At first quarter-end 2016 and year-end 2015, we have a valuation allowance for our deferred tax assets of \$95,389,000 and \$97,068,000 for the portion of the deferred tax assets that we have determined is more likely than not to be unrealizable.

In determining our valuation allowance, we assessed available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of the existing deferred tax asset. A significant piece of objective evidence evaluated was the cumulative loss incurred over the three-year period ended March 31, 2016, principally driven by impairments of oil and gas properties in 2015. Such evidence limits our ability to consider other subjective evidence, such as our projected future taxable income.

The amount of the deferred tax asset considered realizable could be adjusted if negative evidence in the form of cumulative losses is no longer present and additional weight is given to subjective evidence, such as our projected future taxable income.

### **Capital Resources and Liquidity**

#### ***Sources and Uses of Cash***

We operate in cyclical industries and our cash flows fluctuate accordingly. Our principal sources of cash are proceeds from the sale of real estate and timber, the cash flow from oil and gas and income producing properties, borrowings and reimbursements from utility and improvement districts. Our principal cash requirements are for the acquisition and development of real estate and investment in oil and gas leasing and production activities, either directly or indirectly through ventures, taxes, interest and compensation. Operating cash flows are affected by the timing of the payment of real estate development expenditures and the collection of proceeds from the eventual sale of the real estate, the timing of which can vary substantially depending on many factors including the size of the project, state and local permitting requirements and availability of utilities, and by the timing of oil and gas leasing and production activities. Working capital varies based on a variety of factors, including the timing of sales of real estate and timber, oil and gas leasing and production activities, collection of receivables, reimbursement from utility and improvement districts and the payment of payables and expenses.

We regularly evaluate alternatives for managing our capital structure and liquidity profile in consideration of expected cash flows, growth and operating capital requirements and capital market conditions. We may, at any time, be considering or be in discussions with respect to the purchase or sale of our common stock, debt securities, convertible securities or a combination thereof.

#### ***Cash Flows from Operating Activities***

Cash flows from our real estate acquisition and development activities, undeveloped land sales, commercial and income producing properties, timber sales, income from oil and gas properties, recreational leases and reimbursements from utility and improvement districts are classified as operating cash flows.

In first quarter 2016, net cash provided by operating activities was \$5,009,000. The increase in cash provided by operating activities year over year is primarily due to lower real estate development and acquisition expenditures of \$14,794,000. In first quarter 2015, net cash used for operating activities was \$18,766,000 principally due to lower residential lot sales and undeveloped land sales activity and \$34,769,000 in real estate development and acquisition expenditures exceeding \$9,884,000 of real estate cost of sales.

#### ***Cash Flows from Investing Activities***

Capital contributions to and capital distributions from unconsolidated ventures, costs incurred to acquire, develop and construct multifamily projects that will be held as commercial operating properties upon stabilization as investment property, business acquisitions and investment in oil and gas properties and equipment are classified as investing activities. In addition, proceeds from the sale of property and equipment, software costs and expenditures related to reforestation activities are also classified as investing activities.

## [Table of Contents](#)

In first quarter 2016, net cash provided by investing activities was \$51,449,000 principally a result of sales proceeds of \$56,828,000, of which \$28,958,000 are from sale of certain oil and gas properties and \$27,870,000 are proceeds from sale of our interest in 360°, a 304-unit multifamily joint venture in Denver, and the sale of Music Row, a wholly-owned multifamily property under construction in Nashville, for \$14,703,000. In first quarter 2015, net cash used for investing activities was \$24,703,000 principally due to investment of \$23,718,000 in oil and gas properties and equipment associated with previously committed exploration and production operations and investment of \$2,809,000 in property and equipment, software and reforestation, of which \$2,357,000 was related to capital expenditures on our 413 guest room hotel in Austin, partially offset by proceeds of \$2,000,000 related to sale of certain oil and gas properties in North Dakota.

### ***Cash Flows from Financing Activities***

In first quarter 2016, net cash used for financing activities was \$10,254,000 principally due to retirement of \$8,600,000 of our 8.5% senior secured notes and \$2,250,000 of payments related to amortizing notes associated with our tangible equity units. In first quarter 2015, net cash used for financing activities was \$396,000 principally due to payroll taxes on share-settled equity awards and distributions to noncontrolling interests, offset by cash flows provided by net additions to debt.

### ***Real Estate Acquisition and Development Activities***

We secure entitlements and develop infrastructure, primarily for single family residential and mixed-use communities.

We categorize real estate development and acquisition expenditures as operating activities on the statement of cash flows. These development and acquisition expenditures include costs for development of residential lots and mixed-use communities.

In first quarter 2016, real estate development and acquisition expenditures were \$14,794,000 entirely related to real estate development costs as we made no community development site acquisitions in first quarter 2016.

### ***Oil and Gas Drilling and Other Exploration and Development Activities***

Our planned expenditures for 2016 are expected to be significantly lower compared with 2015 based on our plan to exit non-core oil and gas assets. In first quarter 2016, drilling and completion activity was primarily related to settling capital expenditures accrued at year-end 2015. Regional allocation of our capital expenditures for drilling and completion activities in first quarter 2016 is shown below:

	<b>First Quarter 2016</b>
	<b>(In thousands)</b>
Bakken and Three Forks formations of North Dakota	\$ 395
Other, principally in Nebraska	17
	<u>\$ 412</u>

Accrued capital expenditures for drilling and completion costs at first quarter-end 2016 were \$3,677,000 and are included in other accrued expenses. These oil and gas property additions will be reflected as cash used for investing activities in the period the accrued payables are settled.

### ***Liquidity***

At first quarter-end 2016, our senior secured credit facility provides for a \$300,000,000 revolving line of credit maturing May 15, 2017 (with two one-year extension options). The revolving line of credit may be prepaid at any time without penalty. The revolving line of credit includes a \$100,000,000 sublimit for letters of credit, of which \$15,817,000 is outstanding at first quarter-end 2016. Total borrowings under our senior secured credit facility (including the face amount of letters of credit) may not exceed a borrowing base formula.

At first quarter-end 2016, net unused borrowing capacity under our senior secured credit facility is calculated as follows:

	<b>Senior Credit Facility</b>
	<b>(In thousands)</b>
Borrowing base availability	\$ 281,016
Less: borrowings	—
Less: letters of credit	(15,817)
	<u>\$ 265,199</u>

## [Table of Contents](#)

Our net unused borrowing capacity during first quarter 2016 ranged from a high of \$284,426,000 to a low of \$265,199,000. Certain non-core assets support the borrowing base under our senior secured credit facility so we expect our borrowing capacity to be reduced as non-core assets are sold over time. This facility is used primarily to fund our operating cash needs, which fluctuate due to timing of residential and commercial real estate sales, undeveloped land sales, oil and gas leasing, exploration and production activities and mineral lease bonus payments received, timber sales, reimbursements from utility and improvement districts, payment of payables and expenses and capital expenditures.

Our debt agreements contain financial covenants customary for such agreements including minimum levels of interest coverage and limitations on leverage. On December 30, 2015, we amended our senior secured credit facility to reduce the interest coverage ratio from 2.50:1.0 to 2.25:1.0 for the quarter ending December 31, 2015 and March 31, 2016. Thereafter, the interest coverage ratio returns to 2.50:1.0. At first quarter-end 2016, we were in compliance with the financial covenants of these agreements.

The following table details our compliance with the financial covenants calculated as provided in the senior credit facility:

<b>Financial Covenant</b>	<b>Requirement</b>	<b>First Quarter-End 2016</b>
Interest Coverage Ratio <sup>(a)</sup>	≥2.25:1.0	3.18:1.0
Total Leverage Ratio <sup>(b)</sup>	≤50%	40.1%
Tangible Net Worth <sup>(c)</sup>	≥\$379.0 million	\$474.9 million

(a) Calculated as EBITDA (earnings before interest, taxes, depreciation, depletion and amortization), plus non-cash compensation expense, plus other non-cash expenses, divided by interest expense excluding loan fees. This covenant is applied at the end of each quarter on a rolling four quarter basis.

(b) Calculated as total funded debt divided by adjusted asset value. Total funded debt includes indebtedness for borrowed funds, secured liabilities, reimbursement obligations with respect to letters of credit or similar instruments, and our pro-rata share of joint venture debt outstanding. Adjusted asset value is defined as the sum of unrestricted cash and cash equivalents, timberlands, high value timberlands, raw entitled lands, entitled land under development, minerals business, Credo asset value, special improvement district receipts (SIDR) reimbursements value and other real estate owned at book value without regard to any indebtedness and our pro rata share of joint ventures' book value without regard to any indebtedness. This covenant is applied at the end of each quarter.

(c) Calculated as the amount by which consolidated total assets (excluding Credo acquisition goodwill over \$50,000,000) exceeds consolidated total liabilities. At first quarter-end 2016, the requirement is \$379,044,000 computed as: \$379,044,000 plus 85 percent of the aggregate net proceeds received by us from any equity offering, plus 75 percent of all positive net income, on a cumulative basis. This covenant is applied at the end of each quarter.

To make additional discretionary investments, acquisitions, or distributions, we must maintain available liquidity equal to 10 percent of the aggregate commitments in place. At first quarter-end 2016, the minimum liquidity requirement was \$30,000,000, compared with \$402,602,000 in actual available liquidity based on the unused borrowing capacity under our senior secured credit facility plus unrestricted cash and cash equivalents. The failure to maintain such minimum liquidity does not constitute a default or event of default of our senior secured credit facility.

Discretionary investments in community development may be restricted in the event that the revenue/capital expenditure ratio is less than or equal to 1.0x. At first quarter-end 2016, the revenue/capital expenditure ratio was 2.0x. Revenue is defined as total gross revenues (excluding revenues attributed to Credo and multifamily properties), plus our pro rata share of the operating revenues from unconsolidated ventures. Capital expenditures are defined as consolidated development and acquisition expenditures (excluding investments related to Credo and multifamily properties), plus our pro rata share of unconsolidated ventures' development and acquisition expenditures.

In addition, we may elect to make distributions so long as the total leverage ratio is less than 40 percent, the interest coverage is greater than 3.0:1.0 and available liquidity is not less than \$125,000,000. Effective December 30, 2015, the senior secured credit facility was amended to provide that we may make distributions in an aggregate amount not to exceed \$50,000,000 to be funded from up to 65% of the net proceeds from sales of multifamily properties and non-core assets, such as Radisson Hotel & Suites in Austin, and any oil and gas properties. The amendment provides us the flexibility to repurchase stock or pay a special dividend should our Board or Directors determine that we should do so, though no such decisions have been made at this time.

### ***Contractual Obligations and Off-Balance Sheet Arrangements***

In 2014, FMF Littleton LLC, an equity method venture in which we own a 25 percent interest, obtained a senior secured construction loan in the amount of \$46,384,000 to develop a 385-unit multifamily project located in Littleton, Colorado. The outstanding balance was \$26,706,000 at first quarter-end 2016. We provided the lender with a guaranty of completion of the improvements; a guaranty for repayment of 25 percent of the principal balance and unpaid accrued interest; and a standard nonrecourse carve-out guaranty. The principal guaranty will reduce from 25 percent of principal to ten percent upon achievement of certain conditions.

In 2014, CREA FMF Nashville LLC, an equity method venture with Massachusetts Mutual Life Insurance Co. (MassMutual) in which we own a 30 percent interest, obtained a senior secured construction loan in the amount of \$51,950,000 to develop a 320-unit multifamily project located in Nashville, Tennessee. The outstanding balance at first quarter-end 2016 was \$36,832,000. We provided the lender with a guaranty of completion of the improvements; a guaranty for repayment of 25 percent of the principal balance and unpaid accrued interest; and a standard nonrecourse carve-out guaranty. The principal guaranty will reduce from 25 percent of principal to zero percent upon achievement of certain conditions.

### **Cibolo Canyons—San Antonio, Texas**

Cibolo Canyons consists of the JW Marriott® San Antonio Hill Country Resort & Spa development owned by third parties and a mixed-use development we own. We have \$57,887,000 invested in Cibolo Canyons at first quarter-end 2016, all of which is related to the mixed-use development.

### ***Resort Hotel, Spa and Golf Development***

In 2007, we entered into agreements to facilitate third party construction and ownership of the JW Marriott® San Antonio Hill Country Resort & Spa (the Resort), which includes a 1,002 room destination resort and two PGA Tour® Tournament Players Club® (TPC) golf courses.

In exchange for our commitment to the Resort, the third party owners assigned to us certain rights under an agreement between the third party owners and a legislatively created Cibolo Canyons Special Improvement District (CCSID). This agreement includes the right to receive from CCSID 9 percent of hotel occupancy revenues and 1.5 percent of other resort sales revenues collected as taxes by CCSID through 2034. The amount we receive will be net of annual ad valorem tax reimbursements by CCSID to the third party owners of the resort through 2020. In addition, these payments will be net of debt service on bonds issued by CCSID collateralized by hotel occupancy tax (HOT) and other resort sales tax through 2034.

The amounts we collect under this agreement are dependent on several factors including the amount of revenues generated by and ad valorem taxes imposed on the Resort and the amount of debt service incurred by CCSID.

In 2014, we received \$50,550,000 from CCSID principally related to its issuance of \$48,900,000 HOT and Sales and Use Tax Revenue Bonds, resulting in recovery of our full Resort investment. These bonds are obligations solely of CCSID and are payable from HOT and sales and use taxes levied on the Resort by CCSID. To facilitate the issuance of the bonds, we provided a \$6,846,000 letter of credit to the bond trustee as security for certain debt service fund obligations in the event CCSID tax collections are not sufficient to support payment of the bonds in accordance with their terms. The letter of credit must be maintained until the earlier of redemption of the bonds or scheduled bond maturity in 2034. We also entered into an agreement with the owner of the Resort to assign its senior rights to us in exchange for consideration provided by us, including a surety bond to be drawn if CCSID tax collections are not sufficient to support ad valorem tax rebates payable. The surety bond has a balance of \$7,850,000 at first quarter-end 2016. The surety bond will decrease as CCSID makes annual ad valorem tax rebate payments, which obligation is scheduled to be retired in full by 2020. All future receipts are expected to be recognized as gains in the period collected.

### ***Mixed-Use Development***

The mixed-use development we own consists of 2,100 acres planned to include approximately 1,769 residential lots and 150 commercial acres designated for multifamily and retail uses, of which 1,026 lots and 130 commercial acres have been sold through first quarter-end 2016.

In 2007, we entered into an agreement with CCSID providing for reimbursement of certain infrastructure costs related to the mixed-use development. Reimbursements are subject to review and approval by CCSID and unreimbursed amounts accrue interest at 9.75 percent. CCSID's funding for reimbursements is principally derived from its ad valorem tax collections and bond proceeds collateralized by ad valorem taxes, less debt service on these bonds and annual administrative and public service expenses.



[Table of Contents](#)

Because the amount of each reimbursement is dependent on several factors, including CCSID approval and CCSID having an adequate tax base to generate funds that can be used to reimburse us, there is uncertainty as to the amount and timing of reimbursements under this agreement. We expect to recover our investment from lot and tract sales and reimbursement of approved infrastructure costs from CCSID. We have not recognized income from interest due, but not collected. As these uncertainties are clarified, we will modify our accounting accordingly.

Through first quarter-end 2016, we have submitted and were approved for reimbursement of approximately \$54,376,000 of infrastructure costs, of which we have received reimbursements totaling \$34,703,000. At first quarter-end 2016, we have \$19,673,000 in pending reimbursements, excluding interest.

### Critical Accounting Policies and Estimates

There have been no significant changes in our critical accounting policies or estimates from those disclosed in our 2015 Annual Report on Form 10-K.

### New and Pending Accounting Pronouncements

Please read **Note 2—New and Pending Accounting Pronouncements** to the Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

### Statistical and Other Data

A summary of our real estate projects in the entitlement process <sup>(a)</sup> at first quarter-end 2016 follows:

<b>Project</b>	<b>County</b>	<b>Market</b>	<b>Project Acres (b)</b>
<b>California</b>			
Hidden Creek Estates	Los Angeles	Los Angeles	700
Terrace at Hidden Hills	Los Angeles	Los Angeles	30
<b>Texas</b>			
Lake Houston	Harris/Liberty	Houston	3,700
<b>Total</b>			<b>4,430</b>

(a) A project is deemed to be in the entitlement process when customary steps necessary for the preparation of an application for governmental land-use approvals, like conducting pre-application meetings or similar discussions with governmental officials, have commenced, or an application has been filed. Projects listed may have significant steps remaining, and there is no assurance that entitlements ultimately will be received.

(b) Project acres, which are the total for the project regardless of our ownership interest, are approximate. The actual number of acres entitled may vary.

A summary of our non-core timberland and undeveloped land at first quarter-end 2016 follows:

	<b>Acres</b>
<b>Timberland</b>	
Alabama	1,900
Georgia	45,500
Texas	14,300
<b>Higher and Better Use Timberland</b>	
Georgia	19,800
<b>Entitled Undeveloped Land</b>	
Georgia	5,100
<b>Total</b>	<b>86,600</b>

[Table of Contents](#)

A summary of activity within our active projects in the development process, which includes entitled <sup>(a)</sup>, developed and under development real estate projects, at first quarter-end 2016 follows:

Project	County	Interest Owned <sup>(a)</sup>	Residential Lots/Units		Commercial Acres	
			Lots/Units Sold Since Inception	Lots/Units Remaining	Acres Sold Since Inception	Acres Remaining
Texas						
<u>Austin</u>						
Arrowhead Ranch	Hays	100%	2	379	—	11
The Colony	Bastrop	100%	461	1,423	22	31
Double Horn Creek	Burnet	100%	96	3	—	—
Entrada <sup>(b)</sup>	Travis	50%	—	821	—	—
Hunter’s Crossing	Bastrop	100%	510	—	54	49
La Conterra	Williamson	100%	202	—	3	55
Westside at Buttercup Creek	Williamson	100%	1,496	1	66	—
			2,767	2,627	145	146
<u>Corpus Christi</u>						
Caracol	Calhoun	75%	13	61	—	14
Padre Island <sup>(b)</sup>	Nueces	50%	—	—	—	15
Tortuga Dunes	Nueces	75%	—	134	—	4
			13	195	—	33
<u>Dallas-Ft. Worth</u>						
Bar C Ranch	Tarrant	100%	384	721	—	—
Keller	Tarrant	100%	—	—	1	—
Lakes of Prosper	Collin	100%	157	130	4	—
Lantana	Denton	100%	1,262	502	14	—
Maxwell Creek	Collin	100%	959	42	10	—
Parkside	Collin	100%	33	167	—	—
The Preserve at Pecan Creek	Denton	100%	604	178	—	7
River's Edge	Denton	100%	—	202	—	—
Stoney Creek	Dallas	100%	271	425	—	—
Summer Creek Ranch	Tarrant	100%	983	268	35	44
Timber Creek	Collin	88%	—	601	—	—
Village Park	Collin	100%	567	—	3	2
			5,220	3,236	67	53
<u>Houston</u>						
Barrington Kingwood	Harris	100%	176	4	—	—
City Park	Harris	75%	1,312	156	58	107
Harper’s Preserve <sup>(b)</sup>	Montgomery	50%	513	1,215	30	49
Imperial Forest	Harris	100%	45	383	—	—
Long Meadow Farms <sup>(b)</sup>	Fort Bend	38%	1,568	229	190	115
Southern Trails <sup>(b)</sup>	Brazoria	80%	925	71	1	—
Spring Lakes	Harris	100%	348	—	25	4
Summer Lakes	Fort Bend	100%	739	330	56	—
Summer Park	Fort Bend	100%	102	97	34	62
Willow Creek Farms II	Waller/Fort Bend	90%	90	175	—	—
			5,818	2,660	394	337

[Table of Contents](#)

Project	County	Interest Owned <sup>(a)</sup>	Residential Lots/Units		Commercial Acres	
			Lots/Units Sold Since Inception	Lots/Units Remaining	Acres Sold Since Inception	Acres Remaining
<u>San Antonio</u>						
Cibolo Canyons	Bexar	100%	1,026	743	130	56
Oak Creek Estates	Comal	100%	287	267	13	—
Olympia Hills	Bexar	100%	742	12	10	—
Stonewall Estates <sup>(b)</sup>	Bexar	50%	375	15	—	—
			2,430	1,037	153	56
Total Texas			16,248	9,755	759	625
Colorado						
<u>Denver</u>						
Buffalo Highlands	Weld	100%	—	164	—	—
Johnstown Farms	Weld	100%	281	313	2	3
Pinery West	Douglas	100%	86	—	20	106
Stonebraker	Weld	100%	—	603	—	—
			367	1,080	22	109
Georgia						
<u>Atlanta</u>						
Harris Place	Paulding	100%	22	5	—	—
Montebello <sup>(b) (c)</sup>	Forsyth	90%	—	220	—	—
Seven Hills	Paulding	100%	870	210	26	113
West Oaks	Cobb	100%	—	56	—	—
			892	491	26	113
North & South Carolina						
<u>Charlotte</u>						
Ansley Park	Lancaster	100%	—	304	—	—
Habersham	York	100%	41	146	—	6
Walden	Mecklenburg	100%	—	387	—	—
			41	837	—	6
<u>Raleigh</u>						
Beaver Creek <sup>(b)</sup>	Wake	90%	6	187	—	—
			6	187	—	—
			47	1,024	—	6
Tennessee						
<u>Nashville</u>						
Beckwith Crossing	Wilson	100%	12	87	—	—
Morgan Farms	Williamson	100%	108	65	—	—
Vickery Park	Williamson	100%	—	197	—	—
Weatherford Estates	Williamson	100%	8	9	—	—
			128	358	—	—
Wisconsin						
<u>Madison</u>						
Juniper Ridge/Hawks Woods <sup>(b) (c)</sup>	Dane	90%	—	215	—	—
Meadow Crossing II <sup>(b) (c)</sup>	Dane	90%	—	172	—	—
			—	387	—	—

Project	County	Interest Owned <sup>(a)</sup>	Residential Lots/Units		Commercial Acres	
			Lots/Units Sold Since Inception	Lots/Units Remaining	Acres Sold Since Inception	Acres Remaining
Arizona, California, Missouri, Utah						
<i>Tucson</i>						
Boulder Pass <sup>(b) (c)</sup>	Pima	50%	—	88	—	—
Dove Mountain	Pima	100%	—	98	—	—
<i>Oakland</i>						
San Joaquin River	Contra Costa/Sacramento	100%	—	—	—	288
<i>Kansas City</i>						
Somerbrook	Clay	100%	173	222	—	—
<i>Salt Lake City</i>						
Suncrest <sup>(b) (d)</sup>	Salt Lake	90%	—	181	—	—
			173	589	—	288
Total			17,855	13,684	807	1,141

(a) Interest owned reflects our net equity interest in the project, whether owned directly or indirectly. There are some projects that have multiple ownership structures within them. Accordingly, portions of these projects may appear as owned, consolidated or accounted for using the equity method.

(b) Projects in ventures that we account for using equity method.

(c) Venture project that develops and sells homes.

(d) Venture project that develops and sells lots and homes.

A summary of our significant commercial and multifamily properties, excluding two multifamily sites, at first quarter-end 2016 follows:

Project	Market	Interest Owned <sup>(a)</sup>	Type	Acres	Description
Radisson Hotel & Suites <sup>(b)</sup>	Austin	100%	Hotel	2	413 guest rooms and suites
Dillon <sup>(c)</sup>	Charlotte	100%	Multifamily	3	379-unit luxury apartment
Eleven <sup>(d)</sup>	Austin	100%	Multifamily	3	257-unit luxury apartment
Elan 99 <sup>(c)</sup>	Houston	90%	Multifamily	17	360-unit luxury apartment
Acklen <sup>(c)</sup>	Nashville	30%	Multifamily	4	320-unit luxury apartment
HiLine <sup>(c)</sup>	Denver	25%	Multifamily	18	385-unit luxury apartment

(a) Interest owned reflects our net equity interest in the project, whether owned directly or indirectly.

(b) Sold on May 4, 2016 for \$130.0 million.

(c) Under contract to be sold and the transaction is expected to close in second quarter 2016.

(d) Sold on April 18, 2016 for \$60.2 million.

(e) Construction in progress.

## Oil and Gas Owned Mineral Interests

A summary of our oil and gas owned mineral interests <sup>(a)</sup> at first quarter-end 2016 follows:

<u>State</u>	<u>Unleased</u>	<u>Leased (b)</u>	<u>Held By Production (c)</u>	<u>Total (d)</u>
	<b>(Net acres)</b>			
Texas	210,000	12,000	30,000	252,000
Louisiana	131,000	3,000	10,000	144,000
Georgia	152,000	—	—	152,000
Alabama	40,000	—	—	40,000
California	1,000	—	—	1,000
Indiana	1,000	—	—	1,000
	<u>535,000</u>	<u>15,000</u>	<u>40,000</u>	<u>590,000</u>

(a) Includes ventures.

(b) Includes leases in primary lease term or for which a delay rental payment has been received. In the ordinary course of business, leases covering a significant portion of leased net mineral acres may expire from time to time in a single reporting period.

(c) Acres being held by production are producing oil or gas in paying quantities.

(d) Texas, Louisiana, California and Indiana net acres are calculated as the gross number of surface acres multiplied by our percentage ownership of the mineral interest. Georgia and Alabama net acres are calculated as the gross number of surface acres multiplied by our estimated percentage ownership of the mineral interest based on county sampling.

A summary of our Texas and Louisiana owned mineral acres <sup>(a)</sup> by county or parish at first quarter-end 2016 follows:

<u>Texas</u>		<u>Louisiana</u>	
<u>County</u>	<u>Net Acres</u>	<u>Parish</u>	<u>Net Acres</u>
Trinity	46,000	Beauregard	79,000
Angelina	42,000	Vernon	39,000
Houston	29,000	Calcasieu	17,000
Anderson	25,000	Allen	7,000
Cherokee	24,000	Rapides	1,000
Sabine	23,000	Other	1,000
Red River	14,000		<u>144,000</u>
Newton	13,000		
San Augustine	13,000		
Jasper	12,000		
Other	11,000		
	<u>252,000</u>		

(a) Includes ventures.

## Oil and Gas Mineral Interests Leased

A summary of our net oil and gas mineral acres leased from others at first quarter-end 2016 follows:

<u>State</u>	<u>Undeveloped</u>	<u>Held By Production (a)</u>	<u>Total</u>
Oklahoma	—	200	200
Texas	1,000	—	1,000
North Dakota <sup>(b)</sup>	3,500	4,600	8,100
Other	17,400	3,700	21,100
	<u>21,900</u>	<u>8,500</u>	<u>30,400</u>

(a) Excludes approximately 8,000 net acres of overriding royalty interests.

(b) Sold on May 6, 2016.

## Item 3. Quantitative and Qualitative Disclosures About Market Risk

### Interest Rate Sensitivity

Our interest rate risk is principally related to our variable-rate debt. Interest rate changes impact earnings due to the resulting increase or decrease in our variable-rate debt, which was \$44,414,000 at first quarter-end 2016.

The following table illustrates the estimated effect on our pre-tax income of immediate, parallel, and sustained shifts in interest rates for the next 12 months on our variable-rate debt at first quarter-end 2016. This estimate assumes that debt reductions from contractual payments will be replaced with short-term, variable-rate debt; however, that may not be the financing alternative we choose.

<u>Change in Interest Rates</u>	<u>First Quarter-End 2016</u>
	<u>(In thousands)</u>
2%	\$ (714)
1%	\$ (266)
(1)%	\$ 422
(2)%	\$ 843

### Foreign Currency Risk

We have no exposure to foreign currency fluctuations.

### Commodity Price Risk

We have exposure to commodity price fluctuations from our oil and gas production which can materially affect our revenues and cash flows. The prices we receive for our production depend on numerous factors beyond our control. Based on our first quarter 2016 production, a 10 percent decrease in our average realized oil and gas prices would have reduced our oil and gas production revenues by \$527,000. To manage our exposure to commodity price risks associated with the sale of oil and gas, we may periodically enter into derivative hedging transactions for a portion of our estimated production. We do not have any commodity derivative positions outstanding at first quarter-end 2016.

## Item 4. Controls and Procedures

### (a) Disclosure Controls and Procedures

Our management, with the participation of the Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (or the Exchange Act)), as of the end of the period covered by this report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, our disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by us in the reports that we file or submit under the Exchange Act and are effective in ensuring that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(b) Changes in Internal Control over Financial Reporting

There have been no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings

We are involved directly or through ventures in various legal proceedings that arise from time to time in the ordinary course of doing business. We believe we have established adequate reserves for any probable losses and that the outcome of any of the proceedings should not have a material adverse effect on our financial position, long-term results of operations or cash flows. It is possible, however, that circumstances beyond our control or significant subsequent developments could result in additional charges related to these matters that could be significant to results of operations or cash flow in any single accounting period.

### Item 1A. Risk Factors

There are no material changes from the risk factors disclosed in our 2015 Annual Report on Form 10-K.

### Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

#### Issuer Purchases of Equity Securities <sup>(a)</sup>

Period	Total Number of Shares Purchased <sup>(b)</sup>	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares That May Yet be Purchased Under the Plans or Programs
Month 1 (1/1/2016 — 3/31/2016)	—	\$ —	—	3,506,668
Month 2 (2/1/2016 — 2/29/2016)	9,058	\$ 8.60	—	3,506,668
Month 3 (3/1/2016 — 3/31/2016)	14,633	\$ 8.68	—	3,506,668
	<u>23,691</u>	<u>\$ 8.65</u>	<u>—</u>	

(a) On February 11, 2009, we announced that our Board of Directors authorized the repurchase of up to 7,000,000 shares of our common stock. We have purchased 3,493,332 shares under this authorization, which has no expiration date. We have no repurchase plans or programs that expired during the period covered by the table above and no repurchase plans or programs that we intend to terminate prior to expiration or under which we no longer intend to make further purchases.

(b) Includes shares withheld to pay taxes in connection with vesting of restricted stock awards.

### Item 3. Defaults Upon Senior Securities

None.

### Item 4. Mine Safety Disclosures

Not applicable.

### Item 5. Other Information

None.

### Item 6. Exhibits

[Table of Contents](#)

<b>Exhibit</b>	<b>Description</b>
10.1	Purchase and Sale Agreement dated February 4, 2016, by and between Capital of Texas Insurance Group Inc. and Austin Lakeside Hotel Owner LLC.
10.2	Director Nomination Agreement dated February 5, 2016, by and between the Company and Carlson Capital, L.P. (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed with the Commission on February 8, 2016).
10.3	Director Nomination Agreement dated February 5, 2016, by and between the Company and Cove Street Capital, LLC (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K filed with the Commission on February 8, 2016).
10.4	Purchase and Sale Agreement dated April 7, 2016, between Forestar Petroleum Corporation and DW Slate, LLC (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed with the Commission on April 11, 2016).
31.1	Certification of Chief Executive Officer pursuant to Exchange Act rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Exchange Act rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.1	The following materials from Forestar's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Income and Comprehensive Income, (iii) Consolidated Statements of Cash Flows, and (iv) Notes to Consolidated Financial Statements.



**SIGNATURES**

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

FORESTAR GROUP INC.

Date: May 10, 2016

By: /s/ Charles D. Jehl  
Charles D. Jehl  
*Chief Financial Officer*

By: /s/ Sabita C. Reddy  
Sabita C. Reddy  
*Principal Accounting Officer*

# **PURCHASE AND SALE AGREEMENT**

BY AND BETWEEN

**Capitol of Texas Insurance Group Inc.**

AS SELLER

AND

**Austin Lakeside Hotel Owner LLC**

AS PURCHASER

DATED AS OF FEBRUARY 4, 2016

FOR THE

**RADISSON HOTEL & SUITES - AUSTIN DOWNTOWN**

## **TABLE OF CONTENT**

<u>ARTICLE I DEFINITIONS</u>	<u>1</u>
<u>1.1</u> <u>Definitions</u>	<u>1</u>
<u>ARTICLE II THE PROPERTY AND LIABILITIES</u>	<u>10</u>
<u>2.1</u> <u>Description of the Property</u>	<u>10</u>
<u>2.2</u> <u>Excluded Property</u>	<u>13</u>
<u>2.3</u> <u>Assumed Liabilities</u>	<u>14</u>
<u>2.4</u> <u>Retained Liabilities</u>	<u>14</u>
<u>ARTICLE III PURCHASE PRICE</u>	<u>14</u>
<u>3.1</u> <u>Purchase Price</u>	<u>14</u>
<u>3.2</u> <u>Earnest Money</u>	<u>14</u>
<u>3.3</u> <u>Payment of Purchase Price</u>	<u>15</u>
<u>3.4</u> <u>Allocation of Purchase Price</u>	<u>15</u>
<u>3.5</u> <u>Like-Kind Exchange</u>	<u>15</u>
<u>ARTICLE IV DUE DILIGENCE</u>	<u>16</u>
<u>4.1</u> <u>Due Diligence</u>	<u>16</u>
<u>ARTICLE V TITLE TO THE PROPERTY</u>	<u>19</u>
<u>5.1</u> <u>Title Commitment</u>	<u>19</u>
<u>5.2</u> <u>Survey</u>	<u>19</u>
<u>5.3</u> <u>Exceptions to Title</u>	<u>19</u>
<u>5.4</u> <u>Title Policy</u>	<u>21</u>
<u>5.5</u> <u>Conveyance of the Property</u>	<u>21</u>
<u>ARTICLE VI CONDITION OF THE PROPERTY</u>	<u>21</u>
<u>6.1</u> <u>PROPERTY SOLD “AS IS”</u>	<u>21</u>
<u>6.2</u> <u>LIMITATION ON REPRESENTATIONS AND WARRANTIES</u>	<u>22</u>
<u>6.3</u> <u>RELIANCE ON DUE DILIGENCE</u>	<u>22</u>
<u>ARTICLE VII REPRESENTATIONS AND WARRANTIES</u>	<u>23</u>
<u>7.1</u> <u>Seller’s Representations and Warranties</u>	<u>23</u>
<u>7.2</u> <u>Purchaser’s Representations and Warranties</u>	<u>27</u>
<u>ARTICLE VIII COVENANTS</u>	<u>28</u>
<u>8.1</u> <u>Confidentiality</u>	<u>28</u>
<u>8.2</u> <u>Conduct of the Business</u>	<u>30</u>
<u>8.3</u> <u>Licenses and Permits</u>	<u>31</u>
<u>8.4</u> <u>Employees</u>	<u>32</u>
<u>8.5</u> <u>Bookings</u>	<u>33</u>
<u>8.6</u> <u>Tax Contests</u>	<u>34</u>

8.7	<a href="#"><u>Notices and Filings</u></a>	<a href="#"><u>35</u></a>
8.8	<a href="#"><u>Access to Information</u></a>	<a href="#"><u>35</u></a>
8.9	<a href="#"><u>Privacy Laws</u></a>	<a href="#"><u>35</u></a>
8.10	<a href="#"><u>Further Assurances</u></a>	<a href="#"><u>35</u></a>
<a href="#"><u>ARTICLE IX CLOSING CONDITIONS</u></a>		<a href="#"><u>36</u></a>
9.1	<a href="#"><u>Mutual Closing Conditions</u></a>	<a href="#"><u>36</u></a>
9.2	<a href="#"><u>Purchaser Closing Conditions</u></a>	<a href="#"><u>36</u></a>
9.3	<a href="#"><u>Seller Closing Conditions</u></a>	<a href="#"><u>37</u></a>
9.4	<a href="#"><u>Waiver of Closing Conditions</u></a>	<a href="#"><u>38</u></a>
<a href="#"><u>ARTICLE X CLOSING</u></a>		<a href="#"><u>38</u></a>
10.1	<a href="#"><u>Closing Date</u></a>	<a href="#"><u>38</u></a>
10.2	<a href="#"><u>Closing Escrow</u></a>	<a href="#"><u>38</u></a>
10.3	<a href="#"><u>Closing Deliveries</u></a>	<a href="#"><u>39</u></a>
10.4	<a href="#"><u>Possession</u></a>	<a href="#"><u>41</u></a>
<a href="#"><u>ARTICLE XI PRORATIONS AND EXPENSES</u></a>		<a href="#"><u>41</u></a>
11.1	<a href="#"><u>Closing Statement</u></a>	<a href="#"><u>41</u></a>
11.2	<a href="#"><u>Prorations</u></a>	<a href="#"><u>41</u></a>
11.3	<a href="#"><u>Accounts Receivable</u></a>	<a href="#"><u>44</u></a>
11.4	<a href="#"><u>Transaction Costs</u></a>	<a href="#"><u>45</u></a>
<a href="#"><u>ARTICLE XII TRANSITION PROCEDURES</u></a>		<a href="#"><u>45</u></a>
12.1	<a href="#"><u>Safe Deposit Boxes</u></a>	<a href="#"><u>45</u></a>
12.2	<a href="#"><u>Baggage</u></a>	<a href="#"><u>46</u></a>
12.3	<a href="#"><u>Removal of IT Systems</u></a>	<a href="#"><u>47</u></a>
12.4	<a href="#"><u>Notice to Guests</u></a>	<a href="#"><u>47</u></a>
<a href="#"><u>ARTICLE XIII DEFAULT AND REMEDIES</u></a>		<a href="#"><u>47</u></a>
13.1	<a href="#"><u>Seller's Default</u></a>	<a href="#"><u>47</u></a>
13.2	<a href="#"><u>Seller's Right to Cure</u></a>	<a href="#"><u>47</u></a>
13.3	<a href="#"><u>Purchaser's Default</u></a>	<a href="#"><u>48</u></a>
13.4	<a href="#"><u>Purchaser's Right to Cure</u></a>	<a href="#"><u>48</u></a>
13.5	<a href="#"><u>LIQUIDATED DAMAGES; LIMITATION ON DAMAGES</u></a>	<a href="#"><u>48</u></a>
<a href="#"><u>ARTICLE XIV RISK OF LOSS</u></a>		<a href="#"><u>49</u></a>
14.1	<a href="#"><u>Casualty</u></a>	<a href="#"><u>49</u></a>
14.2	<a href="#"><u>Condemnation</u></a>	<a href="#"><u>49</u></a>
<a href="#"><u>ARTICLE XV SURVIVAL, INDEMNIFICATION AND RELEASE</u></a>		<a href="#"><u>50</u></a>
15.1	<a href="#"><u>Survival</u></a>	<a href="#"><u>50</u></a>
15.2	<a href="#"><u>Indemnification by Seller</u></a>	<a href="#"><u>51</u></a>
15.3	<a href="#"><u>Indemnification by Purchaser</u></a>	<a href="#"><u>51</u></a>

<a href="#"><u>15.4</u></a>	<a href="#"><u>Limitations on Indemnification Obligations</u></a>	<a href="#"><u>51</u></a>
<a href="#"><u>15.5</u></a>	<a href="#"><u>Indemnification Procedure</u></a>	<a href="#"><u>52</u></a>
<a href="#"><u>15.6</u></a>	<a href="#"><u>Exclusive Remedy for Indemnification Loss</u></a>	<a href="#"><u>54</u></a>
<a href="#"><u>15.7</u></a>	<a href="#"><u>RELEASE OF SELLER FOR VIOLATIONS OF APPLICABLE LAW</u></a>	<a href="#"><u>54</u></a>
	<a href="#"><u>ARTICLE XVI MISCELLANEOUS PROVISIONS</u></a>	<a href="#"><u>54</u></a>
<a href="#"><u>16.1</u></a>	<a href="#"><u>Notices</u></a>	<a href="#"><u>54</u></a>
<a href="#"><u>16.2</u></a>	<a href="#"><u>No Recordation</u></a>	<a href="#"><u>56</u></a>
<a href="#"><u>16.3</u></a>	<a href="#"><u>Time is of the Essence</u></a>	<a href="#"><u>56</u></a>
<a href="#"><u>16.4</u></a>	<a href="#"><u>Assignment</u></a>	<a href="#"><u>56</u></a>
<a href="#"><u>16.5</u></a>	<a href="#"><u>Successors and Assigns</u></a>	<a href="#"><u>56</u></a>
<a href="#"><u>16.6</u></a>	<a href="#"><u>Third Party Beneficiaries</u></a>	<a href="#"><u>56</u></a>
<a href="#"><u>16.7</u></a>	<a href="#"><u>GOVERNING LAW</u></a>	<a href="#"><u>56</u></a>
<a href="#"><u>16.8</u></a>	<a href="#"><u>Rules of Construction</u></a>	<a href="#"><u>56</u></a>
<a href="#"><u>16.9</u></a>	<a href="#"><u>Severability</u></a>	<a href="#"><u>57</u></a>
<a href="#"><u>16.10</u></a>	<a href="#"><u>JURISDICTION AND VENUE</u></a>	<a href="#"><u>57</u></a>
<a href="#"><u>16.11</u></a>	<a href="#"><u>WAIVER OF TRIAL BY JURY</u></a>	<a href="#"><u>58</u></a>
<a href="#"><u>16.12</u></a>	<a href="#"><u>Prevailing Party</u></a>	<a href="#"><u>58</u></a>
<a href="#"><u>16.13</u></a>	<a href="#"><u>Incorporation of Recitals, Exhibits and Schedules</u></a>	<a href="#"><u>58</u></a>
<a href="#"><u>16.14</u></a>	<a href="#"><u>Updates of Schedules</u></a>	<a href="#"><u>58</u></a>
<a href="#"><u>16.15</u></a>	<a href="#"><u>Entire Agreement</u></a>	<a href="#"><u>58</u></a>
<a href="#"><u>16.16</u></a>	<a href="#"><u>Amendments, Waivers and Termination of Agreement</u></a>	<a href="#"><u>59</u></a>
<a href="#"><u>16.17</u></a>	<a href="#"><u>Contract as an Offer</u></a>	<a href="#"><u>59</u></a>
<a href="#"><u>16.18</u></a>	<a href="#"><u>Execution of Agreement</u></a>	<a href="#"><u>59</u></a>
<a href="#"><u>16.19</u></a>	<a href="#"><u>Confidential Information</u></a>	<a href="#"><u>59</u></a>
<a href="#"><u>16.20</u></a>	<a href="#"><u>Notice of Water Level Fluctuations</u></a>	<a href="#"><u>59</u></a>

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** (this “Agreement”) is made and entered into to be effective as of February 4, 2016 (the “Effective Date”), by and between **Capitol of Texas Insurance Group Inc.**, a Delaware corporation (“Seller”); and **Austin Lakeside Hotel Owner LLC**, a Delaware limited liability company, or its permitted designee(s) or assign(s) in accordance with this Agreement (individually and collectively, “Purchaser”). Seller and Purchaser are sometimes referred to herein individually as a “Party”, and collectively as the “Parties”.

WHEREAS, Seller is the owner of the hotel facility located at 111 East Cesar Chavez Street in Austin, Texas, known generally as the “Radisson Hotel & Suites-Austin Downtown” (the “Hotel”), all as more specifically described in this Agreement.

WHEREAS, Seller desires to sell the Hotel to Purchaser, and Purchaser desires to purchase the Hotel from Seller, on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE I DEFINITIONS**

**1.1 Definitions.** In addition to the terms defined above in the introduction and recitals to this Agreement, the following terms when used in this Agreement shall have the meanings set forth in this Section 1.1.

“Accounts Receivable” means all amounts which Seller is entitled to receive from the Business which are not paid as of the Closing, including, without limitation, charges for the use or occupancy of any guest, conference or banquet rooms or other facilities at the Hotel prior to Closing, any restaurant, bar or banquet services, or any other goods or services provided by or on behalf of Seller at the Hotel prior to Closing, but expressly excluding all (i) credit card charges, checks and other instruments which Seller has submitted for payment as of the Closing, and (ii) items of income otherwise prorated pursuant to Section 11.2 or 11.3.1.

“Affiliate” means, with respect to the Person in question, any other Person that, directly or indirectly, (i) owns or controls fifty percent (50%) or more of the outstanding voting and/or equity interest of such Person, or (ii) controls, is controlled by or is under common control with, the Person in question. For purposes of this definition, the term “control” and its derivations means having the power, directly or indirectly, to direct the management, policies or general conduct of business of the Person in question, whether by the ownership of voting securities, contract or otherwise.

“Anti-Terrorism Laws” means Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other Applicable Law addressing or in any way relating to terrorist acts and acts of war.

“Applicable Law” means (i) all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, board of fire underwriters and similar quasi-governmental authority, and (ii) any judgment, injunction, order or other similar requirement of any court or other adjudicatory authority, in effect at the time in question and in each case to the extent the Person or Property in question is subject to the same.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Beverage Services Agreement” has the meaning set forth in Section 8.3.1.

“Bookings” has the meaning set forth in Section 2.1.16.

“Books and Records” has the meaning set forth in Section 2.1.13.

“Business” means the lodging business and all activities related thereto conducted at the Hotel, including, without limitation, (i) the rental of any guest, conference or banquet rooms or other facilities at the Hotel, (ii) the operation of any restaurant, bar or banquet services, together with all other goods and services provided at the Hotel, (iii) the rental of any commercial or retail space to tenants at the Hotel, (iv) the maintenance and repair of the Real Property and tangible Personal Property, (v) the employment of the Employees, and (vi) the payment of Taxes.

“Business Day” means any day other than a Saturday, Sunday, federal legal holiday, or day that national banks are closed for a holiday.

“Casualty” has the meaning set forth in Section 14.1.

“Closing” has the meaning set forth in Section 10.1.

“Closing Condition Failure” means any Mutual Closing Condition Failure, Purchaser Closing Condition Failure, or Seller Closing Condition Failure which has not been waived by the applicable Party.

“Closing Date” has the meaning set forth in Section 10.1.

“Closing Escrow” has the meaning set forth in Section 10.2.

“Closing Statement” has the meaning set forth in Section 11.1.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any regulations, rulings and guidance issued by the Internal Revenue Service.

“Condemnation” has the meaning set forth in Section 14.2.

“Contracts” means, collectively, the Equipment Leases and Operating Agreements.

“Cut-Off Time” has the meaning set forth in Section 11.2.

“Data Room Web Site” has the meaning set forth in Section 4.1.3(a).

“Deed” means the special warranty deed delivered by Seller to Purchaser pursuant to Section 10.3.1(b).

“Deposit” has the meaning set forth in Section 3.2.1.

“Earnest Money” means, at the time in question, the amounts then deposited with Escrow Agent in respect of the Deposit and, if applicable, the Extension Deposit, together with all interest and any other amounts earned thereon.

“Earnest Money Escrow Agreement” has the meaning set forth in Section 3.2.1.

“Employees” means, at the time in question, all persons employed full-time or part-time at the Hotel and employed by the Existing Manager.

“Employment Agreements” has the meaning set forth in Section 7.1.7(b).

“Environmental Claims” means all claims for reimbursement, remediation, abatement, removal, clean up, contribution, personal injury, property damage or damage to natural resources made by any Governmental Authority or other Person arising from or in connection with the (i) presence or actual or potential spill, leak, emission, discharge or release of any Hazardous Substances over, on, in, under or from the Property, or (ii) violation of any Environmental Laws with respect to the Property.

“Environmental Laws” means any Applicable Laws which regulate the manufacture, generation, formulation, processing, use, treatment, handling, presence, storage, disposal, distribution or transportation, or an actual or potential spill, leak, emission, discharge or release of any Hazardous Substances, pollution, contamination or radiation into any water, soil, sediment, air or other environmental media, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act, (ii) the Resource Conservation and Recovery Act, (iii) the Federal Water Pollution Control Act, (iv) the Toxic Substances Control Act, (v) the Clean Water Act, (vi) the Clean Air Act, (vii) the Hazardous Materials Transportation Act, (viii) the National Environmental Policy Act, (ix) the Superfund Amendments and Reauthorization Act of 1986, (x) the Hazardous and Solid Waste Amendments of 1984, (xi) the Safe Drinking Water Act, (xii) Resource Recovery and Conservation Act, and similar state and local laws, as amended as of the time in question.

“Environmental Liabilities” means all liabilities and obligations under any Environmental Laws arising from or in connection with the Property, including, without limitation, any obligations to obtain any licenses, permits or approvals for the use, storage, or disposal of any Hazardous Substances, or to manage, monitor, control, contain, remove, remedy, respond to, clean up or abate any actual or potential spill, leak, emission, discharge or release of any Hazardous Substances, pollution, contamination or radiation into any water, soil, sediment, air or other environmental media.

“Equipment Leases” has the meaning set forth in Section 2.1.9.



“Escrow Agent” means Title Company.

“Exchange Party” has the meaning set forth in Section 3.5.

“Excluded IT Systems” has the meaning set forth in Section 2.2.6.

“Excluded Property” has the meaning set forth in Section 2.2.

“Existing Management Agreement” means that certain Hotel Services Agreement dated January 1, 2001 (as amended and assigned) between Seller, as owner, and Existing Manager, pursuant to which the Hotel is currently operated.

“Existing Manager” means Talbert Hotel Corporation, a Texas corporation, in its capacity as the manager for the benefit of Seller pursuant to the Existing Management Agreement.

“Extension Deposit” has the meaning set forth in Section 10.1.

“F&B” has the meaning set forth in Section 2.1.6.

“FF&E” has the meaning set forth in Section 2.1.3.

“Forestar” has the meaning set forth in Section 2.2.10.

“Governmental Authority” means any federal, state, county, city or local government or other political subdivision thereof, including, without limitation, any Person exercising executive, legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or Property in question.

“Guest Ledger” means all charges accrued to the open accounts of any guests or customers at the Hotel as of the Cut-Off Time for the use or occupancy of any guest, conference or banquet rooms or other facilities at the Hotel, any restaurant, bar or banquet services, or any other goods or services provided by or on behalf of Seller at the Hotel.

“Hazardous Substances” means any hazardous or toxic substances, materials, waste, pollutants or contaminants, whether in solid, semisolid, liquid or gaseous form as defined in or regulated under any Environmental Laws, including, without limitation, asbestos, toxic mold, radon, petroleum or petroleum by-products and polychlorinated biphenyls.

“Hotel Guest Data” means all guest or customer profiles, contact information (e.g., addresses, phone numbers, facsimile numbers and email addresses), histories, preferences and any other guest or customer information in any database of Radisson or its Affiliates, whether obtained or derived by Radisson, Seller or their Affiliates from: (a) guests or customers of the Hotel or any facility associated with the Hotel; (b) guests or customers of any other hotel or lodging property (including any condominium or interval ownership properties) owned, leased, operated, licensed or franchised by a Radisson Entity, or any facility associated with such hotels or other properties (including restaurants, golf courses and spas); or (c) any other sources and databases, including Radisson brand websites and Radisson central reservations database.

“Hotel Guest Information” means any guest profiles, contact information (e.g., addresses, phone numbers, facsimile numbers and email addresses), histories, preferences and other information obtained in the Ordinary Course of Business from guests of the Hotel during such guests’ stay at the Hotel or during such guests’ use of the facilities associated with the Hotel.

“Improvements” has the meaning set forth in Section 2.1.2.

“Indemnification Claim” has the meaning set forth in Section 15.5.1.

“Indemnification Loss” means, with respect to any Indemnatee, any actual (and not contingent) liability, damage (but expressly excluding any consequential and punitive damages), loss, cost or expense, including, without limitation, reasonable attorneys’ fees and expenses and court costs, incurred by such Indemnatee as a result of the act, omission or occurrence in question.

“Indemnatee” has the meaning set forth in Section 15.5.1.

“Indemnitor” has the meaning set forth in Section 15.5.1.

“Independent Consideration” has the meaning set forth in Section 3.2.5.

“Inspections” has the meaning set forth in Section 4.1.2.

“Intellectual Property” has the meaning set forth in Section 2.1.12.

“Inventoried Baggage” has the meaning set forth in Section 12.2.

“Inventoried Safe Deposit Boxes” has the meaning set forth in Section 12.1.

“IT Systems” has the meaning set forth in Section 2.1.5.

“Knowledge” means (i) with respect to Seller, the actual knowledge of Tom Etheredge, without any duty of inquiry or investigation (other than, with respect to Seller’s representations and warranties in Section 7.1 that are qualified by Seller’s Knowledge, the duty to make inquiry of the General Manager of the Hotel), and expressly excluding the knowledge of any other shareholder, partner, member, affiliate, parent company, trustee, beneficiary, director, officer, manager, employee, agent or representative of Seller or any of their Affiliates, and (ii) with respect to Purchaser, (A) the actual knowledge of Matthew Livian and Jesse Goepel, and expressly excluding the knowledge of any other shareholder, partner, member, affiliate, parent company, trustee, beneficiary, director, officer, manager, employee, agent or representative of Purchaser or any of its Affiliates, (B) any matter disclosed in any exhibits or schedules to this Agreement, (C) any matter disclosed in any of the Seller Due Diligence Materials or any other documents or materials provided by Seller to Purchaser in writing prior to Closing, and (D) any matter disclosed by the Inspections or in the Purchaser Due Diligence Reports. For the purposes of this definition, the term “actual knowledge” means, with respect to any person, the conscious awareness of such person at the time in question, and expressly excludes any constructive, imputed or implied knowledge of such person.

“Land” has the meaning set forth in Section 2.1.1.

“Liability” means any liability, obligation, damage, loss, diminution in value, cost or expense of any kind or nature whatsoever, whether accrued or unaccrued, actual or contingent, known or unknown, foreseen or unforeseen.

“Licenses and Permits” has the meaning set forth in Section 2.1.11.

“Liquor License Permittee” means CCA Hospitality, Inc., a Texas corporation, being the holder of the Liquor Licenses for the Hotel.

“Liquor Licenses” has the meaning set forth in Section 8.3.

“Material Casualty” has the meaning set forth in Section 14.1.1.

“Material Condemnation” has the meaning set forth in Section 14.2.1.

“Material Contract” means any Contract (i) requiring aggregate annual payments in excess of Twenty-Five Thousand and no/100 Dollars (\$25,000.00) for any year during the term of such Contract after the Closing, or (ii) that is not terminable upon 30 days’ (or less) notice without payment of any fee, penalty or premium.

“MEP Contract” means the proposal from Trane Building Services, Proposal ID No. 1843908, dated December 15, 2015 relating to the Property, a copy of which is located in the Data Room Web Site.

“MEP Work” means the work being performed at the Property pursuant to the MEP Contract.

“Mutual Closing Condition Failure” means a failure of a Mutual Closing Condition.

“Mutual Closing Conditions” has the meaning set forth in Section 9.1.1.

“New Manager” means the management company that Purchaser engages to operate the Hotel, if any, after Closing, which may be the Existing Manager.

“New Title and Survey Election Notice” has the meaning set forth in Section 5.3.3.

“New Title and Survey Objection Notice” has the meaning set forth in Section 5.3.3.

“New Title and Survey Response Notice” has the meaning set forth in Section 5.3.3.

“New Title Exception” has the meaning set forth in Section 5.3.3.

“Notice” has the meaning set forth in Section 16.1.1.

“Operating Agreements” has the meaning set forth in Section 2.1.10.

“Ordinary Course of Business” means the ordinary course of business consistent with Seller’s past custom and practice for the Business, taking into account the facts and circumstances in existence from time to time.

“Permitted Exceptions” has the meaning set forth in Section 5.3.2.

“Person” means any natural person, corporation, general or limited partnership, limited liability company, association, joint venture, trust, estate, Governmental Authority or other legal entity, in each case whether in its own or a representative capacity.

“Personal Property” means the Property other than the Real Property.

“Personal Property Sales Taxes” has the meaning in Section 11.4.2.

“Plans and Specifications” has the meaning set forth in Section 2.1.14.

“Post-Closing Employee Obligations” has the meaning provided in Section 8.4.3.

“Post-Execution Disclosure” has the meaning set forth in Section 16.14.

“Pre-Closing Employee Obligations” has the meaning provided in Section 8.4.2.

“Property” has the meaning set forth in Section 2.1.

“Proprietary Marks” has the meaning set forth in Section 2.2.2.

“Proprietary Property” has the meaning set forth in Section 2.2.2.

“Prorations” has the meaning set forth in Section 11.2.

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchased Accounts Receivable” has the meaning set forth in Section 2.1.17.

“Purchaser Closing Condition Failure” has the meaning set forth in Section 13.2.

“Purchaser Closing Conditions” has the meaning set forth in Section 9.2.1.

“Purchaser Closing Deliveries” has the meaning set forth in Section 10.3.2.

“Purchaser Closing Documents” has the meaning set forth in Section 7.2.2.

“Purchaser Cure Period” has the meaning set forth in Section 13.4.

“Purchaser Default” has the meaning set forth in Section 13.3.

“Purchaser Due Diligence Reports” has the meaning set forth in Section 4.1.4.

“Purchaser Indemnitees” means Purchaser and its Affiliates, and each of their respective shareholders, members, partners, trustees, beneficiaries, directors, officers and employees, and the successors, permitted assigns, heirs and devisees of each of the foregoing.

“Purchaser’s Inspectors” has the meaning set forth in Section 4.1.2.

“Purchaser’s New Title Deadline” has the meaning set forth in Section 5.3.3.

“Radisson” means Radisson Hotels International, Inc., a Delaware corporation.

“Radisson Entity” means Radisson or any of its respective Affiliates.

“Radisson Franchise Agreement” means that certain License Agreement dated December 26, 2012 by and between Radisson and Seller.

“Real Property” has the meaning set forth in Section 2.1.2.

“Restaurant Management Agreement” means that certain Restaurant Management Agreement dated April 24, 2015 by and between Seller, Existing Manager and Liquor License Permittee.

“Retail Merchandise” has the meaning set forth in Section 2.1.7.

“Retained Liabilities” has the meaning set forth in Section 2.4.

“Section 5.3.1(2) Exception” is defined in Section 5.3.1.

“Seller Closing Condition Failure” means a failure of a Seller Closing Condition.

“Seller Closing Conditions” has the meaning set forth in Section 9.3.1.

“Seller Closing Deliveries” has the meaning set forth in Section 10.3.1.

“Seller Closing Documents” has the meaning set forth in Section 7.1.2.

“Seller Cure Period” has the meaning set forth in Section 13.2.

“Seller Default” has the meaning set forth in Section 13.1.

“Seller Due Diligence Materials” has the meaning set forth in Section 4.1.3(a).

“Seller Indemnitees” means Seller, Radisson, the Existing Manager, Guarantor and their respective Affiliates, and each of their respective shareholders (other than with respect to any public company), members, partners, trustees, beneficiaries, directors, officers and employees, and the successors, permitted assigns, heirs and devisees of each of the foregoing.

“Seller’s New Title and Survey Election Period” has the meaning set forth in Section 5.3.3.

“Seller’s Possession” means in the physical possession of any officer or employee of Seller who has primary responsibility for the oversight of the Property on behalf of the Seller; provided, however, that any reference in this Agreement to Seller’s Possession of any documents or materials expressly excludes the possession of any such documents or materials that (i) are legally privileged

or constitute attorney work product, (ii) are subject to a confidentiality agreement or to Applicable Law prohibiting their disclosure by Seller, or (iii) constitute confidential internal assessments, reports, studies, memoranda, notes or other correspondence prepared by or on behalf of any officer or employee of Seller. “Seller’s Possession” expressly excludes materials held by Radisson or Radisson Entities that have not been provided to Seller.

“Starbucks” means Starbucks Corporation, a Washington corporation.

“Starbucks License Agreement” means that certain Master Licensing Agreement dated August 17, 2015 by and between Starbucks and Seller.

“Supplies” has the meaning set forth in Section 2.1.4.

“Survey” has the meaning set forth in Section 5.2.

“Survival Period” has the meaning set forth in Section 15.1.1.

“Tax Free Exchange” has the meaning set forth in Section 3.5.

“Taxes” means any federal, state, county, city, local or foreign, real property, personal property, sales, use, room, occupancy, ad valorem or similar taxes, assessments, levies, charges or fees imposed by any Governmental Authority on Seller with respect to the Property or the Business, including, without limitation, any interest, penalty or fine with respect thereto, but expressly excluding any (i) federal, state, county, city, local or foreign income, capital gain, gross receipts, capital stock, franchise, profits, estate, gift or generation skipping tax, or (ii) transfer, documentary stamp, recording or similar tax, levy, charge or fee incurred with respect to the transaction described in this Agreement.

“Temporary Starbucks Agreements” has the meaning set forth in Section 8.3.3.

“Tenant Leases” has the meaning set forth in Section 2.1.8.

“Third-Party Claim” means, with respect to the Person in question, any claim, demand, lawsuit, arbitration or other legal or administrative action or proceeding against the Person in question by any other Person that is not an Affiliate of the Person in question.

“Title Commitment” has the meaning set forth in Section 5.1.

“Title Company” means Fidelity National Title Insurance Company (together with any co-insurers or underwriters as Purchaser may select in its sole discretion).

“Title Policy” has the meaning set forth in Section 5.4.

“Trade Payables” has the meaning set forth in Section 11.2.10.

“Unpermitted Exceptions” has the meaning set forth in Section 5.3.1.

“WARN Act” means the Worker’s Adjustment and Retraining Notification Act, 29 U.S.C. §2101, *et seq.*, as well as the rules and regulations thereto, set forth in 20 CFR 639, *et seq.*, and any similar state and local laws, as amended from time to time, and any regulations, rules and guidance issued pursuant thereto.

“Warranties” has the meaning set forth in Section 2.1.15.

## **ARTICLE II THE PROPERTY AND LIABILITIES**

**2.1 Description of the Property.** Subject to the terms set forth in this Agreement, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and accept from Seller, all right, title and interest of Seller in and to the property and assets set forth in this Section 2.1, but expressly excluding the Excluded Property (collectively, the “Property”):

2.1.1. Land. The land described in Schedule 2.1.1, together with all appurtenant easements, hereditaments and appurtenances thereunto and any other rights and interests appurtenant thereto (the “Land”);

2.1.2. Improvements. All buildings, structures and other improvements located on or affixed to the Land and all fixtures on the Land which constitute real property under Applicable Law (collectively, the “Improvements”; the Land and the Improvements are referred to collectively herein as the “Real Property”);

2.1.3. FF&E. All fixtures (other than those which constitute Improvements), furniture, furnishings, equipment, machinery, tools, vehicles, appliances, art work and other items of tangible personal property which are located at the Hotel and used primarily in the Business, or ordered for future use at the Hotel as of the Closing other than the Supplies, IT Systems, F&B, Retail Merchandise, Books and Records and Plans and Specifications (the “FF&E”);

2.1.4. Supplies. All china, glassware and silverware, linens, uniforms, engineering, maintenance, cleaning and housekeeping supplies, matches and ashtrays, soap and other toiletries, stationery, menus, directories and other printed materials, and all other similar supplies and materials, which are located at the Hotel or ordered for future use at the Hotel as of the Closing (the “Supplies”);

2.1.5. IT Systems. All computer hardware, telecommunications and information technology systems located at the Hotel, and all computer software used at the Hotel (subject to the terms of the applicable license agreement), to the extent the same are transferable, at no cost to Seller, or if any consent is necessary to effectuate such a transfer, Seller shall reasonably cooperate at no liability to Seller in obtaining such consent at Purchaser’s sole cost and expense, but expressly excluding the Excluded IT Systems (the “IT Systems”);

2.1.6. Food and Beverage. All food and beverages (alcoholic and non-alcoholic) which are located at the Hotel (whether opened or unopened), or ordered for future use at the Hotel as of the Closing, including, without limitation, all food and beverages located in the guest rooms, but

expressly excluding any alcoholic beverages to the extent the sale or transfer of the same is not permitted under Applicable Law (the “F&B”);

2.1.7. Retail Merchandise. All merchandise located at the Hotel and held for sale to guests and customers of the Hotel, or ordered for future sale at the Hotel as of the Closing, including, without limitation, the inventory held for sale in any gift shop, or newsstand operated by Seller or any Affiliate of Seller at the Hotel, but expressly excluding the F&B (the “Retail Merchandise”);

2.1.8. Tenant Leases. All leases, licenses, concessions and similar agreements, together with all amendments thereof and supplements thereto, (as well as Seller’s interest, if any, in any subleases) granting to any other Person the right to use or occupy any portion of the Real Property, other than the Bookings, together with all security deposits held by the Seller thereunder as of Closing, to the extent the same and such security deposits are transferable, at no cost to Seller (or, if any consent is necessary to effectuate such a transfer, Seller shall reasonably cooperate at no liability to Seller in obtaining such consent at Purchaser’s sole cost and expense) (the “Tenant Leases”);

2.1.9. Equipment Leases. All leases and purchase money security agreements, together with all amendments thereof and supplements thereto, for any equipment, machinery, vehicles, furniture or other personal property located at the Hotel which are held by Seller or by an Affiliate of Seller and used primarily in the Business, together with all deposits made by Seller thereunder, to the extent the same and such deposits are transferable, at no cost to Seller (or, if any consent is necessary to effectuate such a transfer, Seller shall reasonably cooperate at no liability to Seller in obtaining such consent at Purchaser’s sole cost and expense) (the “Equipment Leases”);

2.1.10. Operating Agreements. All maintenance, service and supply contracts, booking and reservation agreements, credit card service agreements, and all other similar agreements, together with all amendments thereof and supplements thereto, for goods or services which are held by Seller or by an Affiliate of Seller in connection with the Business, other than the Tenant Leases, Equipment Leases, and Licenses and Permits, together with all deposits made or held by the Seller thereunder, to the extent the same and such deposits are transferable, at no cost to Seller (or, if any consent is necessary to effectuate such a transfer, Seller shall reasonably cooperate at no liability to Seller in obtaining such consent at Purchaser’s sole cost and expense) (the “Operating Agreements”);

2.1.11. Licenses and Permits. All licenses, permits, consents, authorizations, approvals, registrations and certificates issued by any Governmental Authority which are held by Seller or by an Affiliate of Seller with respect to the Hotel, including, without limitation, the construction, use or occupancy of the Hotel or the Business, together with any deposits made by Seller thereunder, to the maximum extent the same and such deposits are transferable, at no cost to Seller (or, if any consent is necessary to effectuate such a transfer, Seller shall reasonably cooperate at no liability to Seller in obtaining such consent at Purchaser’s sole cost and expense) (the “Licenses and Permits”);

2.1.12. Intellectual Property. All trademarks, trade names, service marks and other intellectual property rights relating to the Property or the Business (the “Intellectual Property”);



2.1.13. Books and Records. All books and records, to the extent in the possession of Seller, located at the Hotel which relate exclusively to the Hotel or the Business, which shall include copies of any financial statements for the Hotel and Hotel Guest Information, other than that which Seller is prohibited from transferring to Purchaser pursuant to the Radisson Franchise Agreement, Existing Management Agreement, or Applicable Law, but expressly excluding (a) all Hotel Guest Data, and (b) all documents and other materials which (i) are legally privileged or constitute attorney work product, (ii) are subject to a confidentiality agreement or to Applicable Law prohibiting their disclosure by Seller, or any Radisson Entity, or (iii) constitute internal assessments, reports, studies, memoranda, notes or other correspondence, including, without limitation, all (A) internal financial analyses, appraisals, tax returns, financial statements, (B) corporate or other entity governance records, (C) those portions of Employee personnel files which Seller is not legally entitled or authorized to transfer or disclose, and (D) any work papers, memoranda, analysis, correspondence and similar documents and materials prepared by or for Seller in connection with the transaction described in this Agreement (the “Books and Records”);

2.1.14. Plans and Specifications. All plans and specifications, blue prints, architectural plans, engineering diagrams and similar items located at the Hotel or in Seller’s Possession which relate exclusively to the Hotel, to the extent the same are transferable, at no cost to Seller, (or, if any consent is necessary to effectuate such a transfer, Seller shall reasonably cooperate at no liability to Seller in obtaining such consent at Purchaser’s sole cost and expense) (the “Plans and Specifications”);

2.1.15. Warranties. All warranties and guaranties held by Seller with respect to any Improvements or Personal Property, to the extent the same are transferable, at no cost to Seller, (or, if any consent is necessary to effectuate such a transfer, Seller shall reasonably cooperate at no liability to Seller in obtaining such consent at Purchaser’s sole cost and expense) (the “Warranties”);

2.1.16. Bookings. All bookings and reservations for guest, conference and banquet rooms or other facilities at the Hotel as of the Closing, together with all deposits held by Seller as of Closing with respect thereto (the “Bookings”);

2.1.17. Certain Accounts Receivable. All Accounts Receivable included in the Guest Ledger as set forth in Section 11.3.1 (collectively, the “Purchased Accounts Receivable”);

2.1.18. Condemnation/Casualty Proceeds. All awards, compensation or proceeds payable in respect of a Condemnation or Casualty but only to the extent assigned to Purchaser pursuant to Article XIV;

2.1.19. Starbucks License Agreement. The Starbucks License Agreement, if Purchaser assumes it at Closing in accordance with Section 8.3.3;

2.1.20. The Restaurant Management Agreement. The Restaurant Management Agreement, if Purchaser assumes it at Closing in accordance with Section 8.2.5; and

2.1.21. The Existing Management Agreement. The Existing Management Agreement, if Purchaser assumes it at Closing in accordance with Section 8.2.3.

**2.2 Excluded Property.** Notwithstanding anything to the contrary in this Agreement, the property, assets, rights and interests set forth in this Section 2.2 (the “Excluded Property”) shall not be transferred, assigned or conveyed to Purchaser, and are excluded from the Property:

2.2.1. Cash. Except for deposits expressly included in Section 2.1, all cash on hand or on deposit in any house bank, operating account or other account or reserve maintained in connection with the Business;

2.2.2. Proprietary Property. All (i) trademarks, trade names, service marks, symbols, logos and other intellectual property rights held by any Radisson Entity or the Existing Manager or any portion of Intellectual Property containing the name of Seller or Forestar (the “Proprietary Marks”); (ii) signs and other fixtures and personal property at the Hotel which bear any of the Proprietary Marks; (iii) internal management, operational, employee and similar manuals, handbooks and publications of a Radisson Entity, the Existing Manager, Seller or Forestar; and (iv) Radisson Entity, the Existing Manager, Seller and Forestar’s centralized systems and programs used in connection with the Business, including, without limitation, the (A) sales and marketing, and (B) purchasing systems and programs (collectively, “Proprietary Property”);

2.2.3. Intentionally Deleted.

2.2.4. Third-Party Property. Any fixtures, personal property or intellectual property owned by (i) the lessor under any Equipment Leases, (ii) the supplier, vendor, licensor or other party under any Operating Agreements, or Licenses and Permits, (iii) the tenant under any Tenant Leases, (iv) any Employees, and (v) any guests or customers of the Hotel;

2.2.5. Hotel Guest Information and Data. Any Hotel Guest Information that Seller is prohibited from transferring to Purchaser pursuant to the Radisson Franchise Agreement, Existing Management Agreement, or Applicable Law and all Hotel Guest Data;

2.2.6. Excluded IT Systems. Any computer software not owned by Seller (the “Excluded IT Systems”), including, without limitation, any software to which Seller has a nontransferable license, which Seller shall have the right to remove from the Hotel at or prior to Closing to the extent that a transfer of such software was not effectuated to Purchaser under Section 2.1.

2.2.7. Starbucks License Agreement. The Starbucks License Agreement, if it is terminated at Closing in accordance with Section 8.3.3;

2.2.8. The Existing Management Agreement. The Existing Management Agreement, if it is terminated at closing in accordance with Section 8.3.3;

2.2.9. The Radisson Franchise Agreement. The Radisson Franchise Agreement, which shall be terminated by Seller at Closing at Purchaser’s cost and expense;

2.2.10. Forestar Rights. Rights under all contracts between Seller, on the one hand, and Forestar (USA) Real Estate Group Inc. or any affiliate, subsidiary or related party of Forestar

(collectively “Forestar”), on the other hand, all warranties and guaranties provided by Forestar, the name “Forestar” and all variants thereof and any logo or emblem embodying such name; and

2.2.11. The Restaurant Management Agreement. The Restaurant Management Agreement, if it is terminated at Closing in accordance with Section 8.2.5.

**2.3 Assumed Liabilities.** At Closing, Purchaser shall assume all Liabilities arising from, relating to or in connection with the Property or the Hotel that (i) arise at and after Closing or (ii) arise before or after Closing, to the extent that Purchaser has received a credit for such Liabilities under Section 11.2, but expressly excluding the Retained Liabilities (the “Assumed Liabilities”). The Parties’ rights and obligations under this Section 2.3 shall survive the Closing.

**2.4 Retained Liabilities.** At Closing, Seller shall retain all Liabilities arising from, relating to or in connection with the Property or the Hotel that arise out of or otherwise relate to Seller’s period of ownership, but expressly excluding the Assumed Liabilities (the “Retained Liabilities”), but expressly excluding any Section 5.3.1(2) Exceptions. Without limitation the generality of the foregoing, the Retained Liabilities shall expressly include any Liabilities (for Taxes or otherwise) relating to Seller’s period of ownership that result from adjudication (pursuant to a final, non-appealable judgment by a court of competent jurisdiction) of the claims made by The City of Austin under Cause No. D-1-GN-15-003492 or other causes of actions related thereto. The Parties’ rights and obligations under this Section 2.4 shall survive the Closing.

### **ARTICLE III PURCHASE PRICE**

**3.1 Purchase Price.** The purchase price for the Property is \$130,000,000 (the “Purchase Price”), which shall be adjusted at Closing for the Prorations pursuant to Section 11.2, the Accounts Receivable pursuant to Section 11.3, and as otherwise expressly provided in this Agreement.

**3.2 Earnest Money.**

3.2.1. Deposit of Earnest Money. Purchaser shall deposit with Escrow Agent the amount of \$5,000,000 (the “Deposit”) by 5:00 pm EST on the day that is one (1) Business Day after the execution and delivery of this Agreement by the Parties. If Purchaser does not make the Deposit by said time, Seller, at its option, may terminate this Agreement by providing written notice to Purchaser delivered to Purchaser before Purchaser’s deposit of the Deposit. The Deposit shall be held by Escrow Agent in escrow as Earnest Money under this Agreement pursuant to the escrow agreement in the form attached hereto as Exhibit A, to be entered into among Seller, Purchaser and Escrow Agent (the “Earnest Money Escrow Agreement”).

3.2.2. Investment of Earnest Money. The Deposit shall be invested in accordance with the Earnest Money Escrow Agreement upon Purchaser’s delivery of the Deposit.

3.2.3. Disbursement of Earnest Money to Seller. At Closing, Purchaser and Seller shall direct Escrow Agent to disburse the Earnest Money to Seller, and Purchaser shall receive a credit against the Purchase Price in the amount of the Earnest Money, less the Independent Consideration,

disbursed to Seller. If this Agreement is terminated for any reason and Purchaser is not specifically entitled to a refund of the Earnest Money under an express provision of this Agreement, Seller shall direct Escrow Agent to disburse the Earnest Money to Seller no later than two (2) Business Days after such termination, subject to the terms of the Earnest Money Escrow Agreement. This Section 3.2.3 shall survive the termination of this Agreement.

3.2.4. **Refund of Earnest Money to Purchaser.** If this Agreement is terminated and Purchaser is specifically entitled to a refund of the Earnest Money pursuant to an express provision of this Agreement, then Escrow Agent shall disburse the Earnest Money to Purchaser less the Independent Consideration, subject to the terms of the Earnest Money Escrow Agreement. This Section 3.2.4 shall survive the termination of this Agreement.

3.2.5. **Independent Consideration.** The amount of One Hundred and no/100 Dollars (\$100.00) out of the Earnest Money shall be independent consideration (the “**Independent Consideration**”) for Purchaser’s right to terminate this Agreement pursuant to Section 4.1.1 and for Seller’s execution, delivery and performance of this Agreement, the sufficiency of which is hereby acknowledged by Seller. The Independent Consideration is in addition to, and independent of, any other consideration or payment provided in this Agreement, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Agreement.

**3.3 Payment of Purchase Price.** At Closing, Purchaser shall pay to Seller the Purchase Price (as adjusted pursuant to Section 3.1), less the Earnest Money disbursed to Seller, by wire transfer or other method of immediately available U.S. federal funds. If Seller receives the Purchase Price from Purchaser after 4 p.m. (Central Standard Time) and is unable to reinvest such funds on the Closing Date, then as a condition to the completion of the Closing, Purchaser shall pay interest on the amount of such funds from and including the Closing Date until (but not including) the next Business Day at the “prime rate” charged by Seller’s bank.

**3.4 Allocation of Purchase Price.** The Parties will use good faith efforts to agree upon a Purchase Price allocation among the Real Property and the Personal Property prior to Closing. If the Parties can agree upon a Purchase Price allocation, such allocation will be deemed to represent an arm’s length agreement based on the Parties’ best judgment as to the fair market value of the Hotel and the Real Property and the Personal Property comprising the Hotel, respectively. In such event, the Parties shall file all federal, state and local tax returns and related tax documents consistent with such agreed allocation. If the Parties fail to agree upon a Purchase Price allocation, each Party shall be free to allocate the Purchase Price in any manner as they reasonably deem appropriate and each party shall bear the risk of any losses and/or tax liabilities arising in connection therewith. This Section 3.4 shall survive the Closing.

**3.5 Like-Kind Exchange.** Notwithstanding anything to the contrary in this Agreement, Purchaser acknowledges and agrees that Seller shall have the right at Closing, in lieu of receiving the Purchase Price for the sale of the Property, to exchange the Property in a transaction intended to qualify as a tax-free exchange under Section 1031 of the Code (the “**Tax-Free Exchange**”). If Seller elects to effect a Tax-Free Exchange pursuant to this Section 3.5, Seller shall provide written notice to Purchaser at least five (5) Business Days prior to Closing, in which case Seller shall enter into an exchange agreement and other exchange documents with a “qualified intermediary” (as

defined in Treas. Reg. § 1.1031(k)-1(g)(4) of the Code) (the “Exchange Party”), pursuant to which Seller shall assign all of their right, title and interest (but not their liabilities or obligations) under this Agreement to the Exchange Party. Purchaser shall execute and deliver such documents as may be reasonably required to complete the transactions contemplated by the Tax-Free Exchange which are in form and substance reasonably acceptable to Purchaser, and otherwise cooperate with Seller in all reasonable respects to effect the Tax-Free Exchange. Purchaser agrees that if Seller elects to effect a Tax-Free Exchange pursuant to this Section 3.5, at Closing, Purchaser shall pay the Purchase Price to the Exchange Party and direct Escrow Agent to disburse the Earnest Money, less the Independent Consideration, to the Exchange Party. Notwithstanding the foregoing in this Section 3.5, the Tax-Free Exchange shall not diminish Purchaser’s rights, nor increase Purchaser’s liabilities or obligations, under this Agreement. **SELLER SHALL PAY FOR ALL FEES, COSTS AND EXPENSES IN CONNECTION WITH THE TAX-FREE EXCHANGE, AND SHALL INDEMNIFY AND HOLD HARMLESS THE PURCHASER INDEMNITEES IN ACCORDANCE WITH ARTICLE XV FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY PURCHASER INDEMNITEE ARISING FROM OR IN CONNECTION WITH PURCHASER’S COOPERATING WITH SELLER’S TAX FREE EXCHANGE.**

## **ARTICLE IV DUE DILIGENCE**

### **4.1 Due Diligence.**

4.1.1. Due Diligence. Purchaser acknowledges that prior to the Effective Date, Purchaser had the opportunity to perform its due diligence review of the Property and all matters related thereto which Purchaser deems advisable, including, without limitation, any engineering, environmental, financial, operational and legal compliance matters relating to the Property and that Purchaser is satisfied with the results of its due diligence review of the Property.

4.1.2. Due Diligence Inspections. Purchaser shall have the right to perform such additional examinations, tests, investigations and studies of the Property (the “Inspections”) as Purchaser reasonably deems advisable until the Closing Date, in accordance with this Section 4.1.2. Purchaser may conduct the Inspections with its officers, employees, contractors, consultants, agents or representatives (“Purchaser’s Inspectors”); provided, however, that Purchaser shall cause the Purchaser’s Inspectors to comply with the provisions of Section 8.1. Seller shall provide reasonable access to the Property for Purchaser’s Inspectors to perform the Inspections; provided, however, that (i) Purchaser shall provide Seller with at least one (1) Business Day’s prior notice of each of the Inspections; (ii) at Seller’s election, Purchaser’s Inspectors shall be accompanied by an employee, agent or representative of Seller; (iii) the Inspections shall be conducted by Purchaser’s Inspectors on a Business Day between 10:00 a.m. and 5:00 p.m. (local time), or as otherwise agreed by Seller; (iv) Purchaser’s Inspectors shall not perform any drilling, coring or other invasive testing, without Seller’s prior written consent, which may be withheld or conditioned in Seller’s sole discretion; (v) Purchaser’s right to perform the Inspections shall be subject to the rights of tenants, guests and customers at the Hotel; and (vi) the Inspections shall not unreasonably interfere with the Business, and Purchaser’s Inspectors shall comply with Seller’s reasonable requests with respect

to the Inspections to minimize such interference. Notwithstanding Purchaser's right to conduct Inspections from the Effective Date until the Closing Date, Purchaser shall have no right to terminate this Agreement based on such Inspections.

4.1.3. Seller's Due Diligence Materials.

(a) Purchaser acknowledges its receipt of the due diligence materials set forth in the secure web site located at <https://dox.eastdilsecured.com/Portal/property> established by Seller (the "Data Room Web Site") and those materials listed on Schedule 4.1.3(a) attached hereto. Seller shall provide to Purchaser promptly upon request by Purchaser, or make available to Purchaser in the Data Room Website or at the Hotel (with notice to Purchaser regarding the availability of such materials), for review and copying by Purchaser, all due diligence materials in Seller's Possession relating to the Property which are reasonably requested by Purchaser, but excluding: (i) confidential internal assessments, reports, studies, memoranda, notes or other correspondence prepared by or on behalf of any officer or employee of Seller, (ii) loan files pertaining to mortgage financing obtained or considered for the Property by Seller or its agents, advisors, and contractors, (iii) confidential personnel files (except for a salary history of the existing on-site personnel) related to present and past employees of Existing Manager, (v) privileged attorney-client communications, (vi) attorney work product, (viii) materials subject to a confidentiality agreement or to Applicable Law prohibiting their disclosure, or (ix) any other materials of Seller, Existing Manager or Forestar that are of a proprietary or confidential nature relating to the business or the assets of either party or any of their respective affiliates or related companies. Purchaser agrees to acknowledge in writing, upon Seller's request, the receipt of any due diligence documents or materials delivered to Purchaser. (All documents and materials provided by Seller to Purchaser pursuant to or in anticipation of this Agreement (including, without limitation, any and all documents and materials set forth on the Data Room Web Site), together with any copies or reproductions of such documents or materials, or are referred to collectively herein as the "Seller Due Diligence Materials".)

(b) If this Agreement is terminated, Purchaser shall promptly (A) return all original Seller Due Diligence Materials provided to Purchaser, and at Seller's request, destroy all other Seller Due Diligence Materials, (B) use commercially reasonable efforts to cause all Persons to whom Purchaser has provided any Seller Due Diligence Materials to return any original Seller Due Diligence Materials to Purchaser, and, if requested by Seller, destroy all other Seller Due Diligence Materials, and (C) certify to Seller that all original Seller Due Diligence Materials in Purchaser's possession have been returned to Seller and all other Seller Due Diligence Materials have been destroyed (if so requested by Seller). This Section 4.1.3(b) shall survive the termination of this Agreement.

4.1.4. Purchaser's Due Diligence Reports. At Seller's request, Purchaser shall provide a copy to Seller, without any representation or warranty related thereto, of all studies, reports and assessments prepared by any Person for or on behalf of Purchaser (except to the extent the same (i) are legally privileged or constitute attorney work product, (ii) are subject to a confidentiality agreement or to Applicable Law prohibiting their disclosure by Purchaser, or (iii) constitute confidential internal assessments, reports, studies, memoranda, notes or other correspondence prepared by or on behalf of any officer or employee of Purchaser) in connection with the Inspections

(the “Purchaser Due Diligence Reports”). Notwithstanding the foregoing, the extent of the Inspections to be conducted and the Purchaser Due Diligence Reports to be prepared in connection with the transactions contemplated by this Agreement shall be in the sole discretion of Purchaser, and Purchaser shall be under no obligation to complete or cause the completion of any such Inspections or Purchaser Due Diligence Reports, whether or not this Agreement is terminated prior to Closing. If requested by Seller, Purchaser shall request a reliance letter in favor of Seller from the Person who prepared such Purchaser Due Diligence Reports; provided that Seller must pay for any fees, costs or expenses charged by such Person for such reliance letter. This Section 4.1.4 shall survive the termination of this Agreement.

4.1.5. Release and Indemnification. **PURCHASER (FOR ITSELF AND ALL PURCHASER INDEMNITEES) HEREBY RELEASES THE SELLER INDEMNITEES FOR ANY INDEMNIFICATION LOSS INCURRED BY ANY PURCHASER INDEMNITEE ARISING FROM OR IN CONNECTION WITH THE PERFORMANCE OF PURCHASER’S INSPECTIONS (INCLUDING, WITHOUT LIMITATION, ANY LIENS PLACED ON THE PROPERTY OR ANY OTHER PROPERTY OWNED BY A PERSON OTHER THAN PURCHASER, AS A RESULT OF SUCH INSPECTIONS), EXCEPT TO THE EXTENT RESULTING SOLELY FROM ANY SELLER INDEMNITEE’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND PROVIDED THAT SUCH RELEASE SHALL NOT APPLY TO ANY INDEMNIFICATION OBLIGATION OF SELLER TO THE EXTENT RESULTING FROM A BREACH OF SELLER’S REPRESENTATIONS OR WARRANTIES SET FORTH IN SECTION 7.1. PURCHASER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE SELLER INDEMNITEES IN ACCORDANCE WITH ARTICLE XV FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY SELLER INDEMNITEE ARISING FROM OR IN CONNECTION WITH THE PERFORMANCE OF THE INSPECTIONS, EXCEPT TO THE EXTENT RESULTING SOLELY FROM ANY SELLER INDEMNITEE’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NOTWITHSTANDING THE FOREGOING, PURCHASER SHALL HAVE NO INDEMNIFICATION OBLIGATION WITH RESPECT TO THE MERE DISCOVERY OR DISCLOSURE (IF REQUIRED BY ANY APPLICABLE LAW) OF A PRE-EXISTING CONDITION (INCLUDING WITHOUT LIMITATION, ENVIRONMENTAL LIABILITIES RESULTING FROM ANY SUCH PRE-EXISTING CONDITION) AT THE PROPERTY BY PURCHASER. AT SELLER’S REQUEST, PURCHASER, AT ITS COST AND EXPENSE, SHALL REPAIR ANY PHYSICAL DAMAGE TO THE PROPERTY OR ANY OTHER PROPERTY OWNED BY A PERSON OTHER THAN PURCHASER ARISING FROM OR IN CONNECTION WITH THE INSPECTIONS, AND RESTORE THE PROPERTY OR SUCH OTHER THIRD-PARTY PROPERTY TO THE SAME CONDITION AS EXISTED PRIOR TO SUCH INSPECTIONS, OR REPLACE THE PROPERTY OR SUCH THIRD-PARTY PROPERTY WITH PROPERTY OF THE SAME QUANTITY AND QUALITY. THIS SECTION 4.1.5 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

4.1.6. Insurance. Prior to commencing any Inspections, Purchaser shall provide to Seller a certificate of insurance, in form and substance reasonably satisfactory to Seller, evidencing that Purchaser maintains (i) commercial general liability insurance in an amount no less than Two Million

and no/100 Dollars (\$2,000,000.00), with an insurance company with a Best's rating of no less than A/VIII, insuring Purchaser against its indemnification obligations under Section 4.1.5, and naming Seller, Existing Manager and such other Persons designated by Seller as an additional insured thereunder, and (ii) worker's compensation insurance in amount, form and substance required under Applicable Law. Purchaser's maintenance of such insurance policies shall not release or limit Purchaser's indemnification obligations under Section 4.1.5.

## ARTICLE V TITLE TO THE PROPERTY

**5.1 Title Commitment.** Purchaser acknowledges that prior to the Effective Date, Purchaser received from the Title Company a current title insurance commitment issued by or through the Title Company committing to insure Purchaser's title to the Property (the "Title Commitment"), along with copies of the title exceptions and underlying documents set forth in the Title Commitment, tax certificates relating to the Property, and any other recorded instruments that affect Seller's title to the Property.

**5.2 Survey.** Purchaser acknowledges that prior to the Effective Date Seller provided Purchaser a new ALTA (or substantially equivalent Texas form) as-built survey of the Property prepared by a surveyor licensed in the State in which the Property is located, certified to Seller (the "Survey"). After the Effective Date, Purchaser shall order a visual update to the Survey and cause the Survey to be certified to Purchaser and Title Company. Any matters disclosed by the update shall be addressed as set forth in Section 5.3.3.

### **5.3 Exceptions to Title.**

5.3.1. Unpermitted Exceptions. Seller shall not be required to respond to, bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any Purchaser title and survey objections, except that Seller shall, on or prior to the Closing, be required to remove, by payment, bonding or otherwise, the following items (the "Unpermitted Exceptions"): (i) any mortgage or other lien granted, assumed or taken "subject to" by Seller which secures indebtedness for borrowed money; (ii) any title encumbrances which have been voluntarily recorded by Seller or otherwise placed by Seller or consented by Seller to be placed against the Property on or following the date hereof; (iii) all mechanics' and materialmen's liens arising from work performed by or on behalf of Seller; (iv) all judgment and tax liens against Seller; and (v) other liens from Governmental Authorities for actions taken by Seller that Seller was required to take, but failed to do so, regardless of the nature thereof, which are in liquidated amounts and may be satisfied by the payment of money (including the preparation or filing of appropriate release or satisfaction instruments in connection therewith), provided, that, (1) Seller shall not be obligated to remove any items set forth in *clause (v)* to the extent the cost of removing the same would exceed One Million and 00/100 Dollars (\$1,000,000.00) in the aggregate (it being agreed that Seller shall be obligated to remove exceptions up to \$1,000,000 in the aggregate), and (2) with respect to items in *clause (v)* that are in excess of \$1,000,000, at Purchaser's election in its sole and absolute discretion, Purchaser shall be entitled to a credit against the Purchase Price up to \$1,000,000, in which event (x) such title objection (a "Section 5.3.1(2) Exception") shall be deemed to be, for all



purposes, a Permitted Exception, and (y) Purchaser shall close hereunder notwithstanding the existence of same.

5.3.2. Permitted Exceptions. The term “Permitted Exceptions” shall mean: (i) the exceptions described on Schedule 5.3.2; (ii) items shown on the Survey; (iii) Taxes not yet due and payable; (iv) the rights and interests of customers and guests at the Hotel to occupy rooms on a transient license basis; (v) the rights of tenants under the Tenant Leases, as tenants only with no options to purchase the Property, pursuant to the Tenant Leases; and (vi) matters created by, through or under Purchaser.

5.3.3. Updated Title Commitments or Survey. If any update of the Title Commitment delivered to Purchaser after the Effective Date discloses any matter that is not a Permitted Exception and was not caused by Purchaser or any Person on behalf of Purchaser which was not disclosed in the Title Commitment or Survey (a “New Title Exception”), Purchaser shall give written notice thereof to Seller promptly after the date Purchaser learns of same. Purchaser may elect to either (A) proceed to Closing pursuant to this Agreement and accept title to the Real Property subject to such New Title Exception which thereafter shall be deemed to constitute a Permitted Exception, without any credit against the Purchase Price for such New Title Exception, or (B) request to terminate this Agreement. If Purchaser desires to terminate this Agreement because of such New Title Exception, Purchaser shall provide written notice to Seller requesting such termination and identifying the New Title Exception for which it wishes to terminate this Agreement within the earlier of: (i) five (5) days after receiving such update of the Title Commitment or Survey, or (ii) the Closing (the “New Title and Survey Objection Notice”). If Purchaser does not provide a New Title and Survey Objection Notice to Seller within such time period, Purchaser shall be deemed to have elected to proceed to Closing pursuant to clause (A) above. If Purchaser timely provides a New Title and Survey Objection Notice to Seller, Seller shall have no obligation to cure or respond to any New Title Exceptions (other than Unpermitted Exceptions), unless Seller elects in its sole discretion, by providing written notice (the “New Title and Survey Election Notice”) to Purchaser within five (5) days after Seller’s receipt of such New Title and Survey Objection Notice (“Seller’s New Title and Survey Election Period”), to (i) cure the New Title Exception prior to the expiration of Seller’s New Title and Survey Election Period, in which event such New Title Exception shall be deemed an Unpermitted Exception, or (ii) bond over or pay off and discharge the New Title Exception at Closing. If Seller does not provide a New Title and Survey Election Notice to Purchaser electing option (i) or (ii) of the preceding sentence within the required time period, Purchaser shall have two (2) Business Days after the expiration of Seller’s New Title and Survey Election Period (“Purchaser’s New Title Deadline”) to elect, by providing written notice to Seller, to terminate this Agreement, in which event the Earnest Money shall be refunded to Purchaser, less the Independent Consideration, in accordance with Section 3.2.4, and the Parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination. If Purchaser does not provide such notice within the required time period, Purchaser shall be deemed to have waived the New Title Exception and Purchaser shall proceed with Closing and accept title to the Real Property subject to such New Title Exception which thereafter shall be deemed to constitute a Permitted Exception, without any credit against the Purchase Price. The Closing Date will be extended, if applicable, to one (1) Business Day after Purchaser’s New Title Deadline.

5.3.4. Removal of Unpermitted Exceptions. Except for the Unpermitted Exceptions, Seller shall have no obligation to cure or remove any liens, encumbrances or other exceptions to title disclosed in the Title Commitment, or any survey defects shown on the Survey. Seller may cure any Unpermitted Exception by removing such Unpermitted Exception from title or causing the Title Company to remove or insure over such Unpermitted Exception in the Title Policy at any time prior to or at Closing. If the Title Company does not agree to remove or insure over any Unpermitted Exception in the Title Policy, but another nationally recognized title insurance company is willing to issue the Title Policy without such Unpermitted Exception in such Title Policy, then Seller shall have the right to obtain, and Purchaser shall accept, a Title Policy from such other title insurance company which otherwise shall satisfy the requirements of Section 5.4, in which case the term "Title Company" shall be deemed to refer to such other title insurance company for the Real Property insured by such Title Policy. Any incremental cost associated with obtaining such a Title Policy from such other title insurance company shall be borne and paid at Closing solely by Seller, notwithstanding the provisions of Section 11.4.

5.3.5. Extension of the Closing Date. If Seller fails to remove or cure any Unpermitted Exceptions prior to Closing, Seller shall have the right, but not the obligation, to postpone the Closing one or more times for up to fifteen (15) days in the aggregate in each case by providing written notice to Purchaser no later than three (3) Business Days prior to the then scheduled Closing Date.

**5.4 Title Policy.** At Closing, Seller shall cause the Title Company to issue an owner's title insurance policy to Purchaser (which may be in the form of a mark-up of the Title Commitment) in accordance with the Title Commitment, insuring Purchaser's title to the Real Property as of the Closing Date, in the amount of the Purchase Price, subject only to the Permitted Exceptions (the "Title Policy"). The base premium for the Title Policy shall be paid by Seller and Purchaser shall be solely responsible for any additional premiums in excess of the base premium for any endorsements or affirmative coverages that it may obtain in the Title Policy, as well as any premiums for mortgagee policies for its lenders, if any.

**5.5 Conveyance of the Property.** At Closing, Seller shall convey (a) good and indefeasible title to the Real Property subject only to (i) the Permitted Exceptions, and (ii) any Unpermitted Exceptions which are cured by causing the Title Company to remove or insure over such Unpermitted Exceptions in the Title Policy, in accordance with Section 5.3.4, but which otherwise are not removed from title, and (b) the Personal Property, free and clear of all financing liens created by or assumed by Seller (except for the Equipment Leases, which will be subject to the ownership interest of lessor thereunder).

## **ARTICLE VI CONDITION OF THE PROPERTY**

**6.1 PROPERTY SOLD "AS IS".** PURCHASER ACKNOWLEDGES AND AGREES THAT (A) THE PURCHASE OF THE PROPERTY SHALL BE ON AN "AS IS", "WHERE IS", "WITH ALL FAULTS" BASIS, SUBJECT TO ORDINARY WEAR AND TEAR FROM THE EFFECTIVE DATE UNTIL CLOSING, (B) SELLER HAS NO OBLIGATION TO REPAIR ANY DAMAGE

TO OR DEFECT IN THE PROPERTY, REPLACE ANY OF THE PROPERTY OR OTHERWISE REMEDY ANY MATTER AFFECTING THE CONDITION OF THE PROPERTY, AND (C) UPON CLOSING, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT OR CONTAINED IN ANY SELLER CLOSING DELIVERIES, PURCHASER WILL ACCEPT THE PROPERTY SUBJECT TO ADVERSE STRUCTURAL, DESIGN, CONSTRUCTION, ENGINEERING, MAINTENANCE, REPAIR, PHYSICAL, ECONOMIC OR ENVIRONMENTAL CONDITIONS THAT MAY THEN EXIST OR HAVE PREVIOUSLY EXISTED AND THAT WERE OR WERE NOT REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS. THIS SECTION 6.1 SHALL SURVIVE THE CLOSING.

**6.2 LIMITATION ON REPRESENTATIONS AND WARRANTIES** . PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY SELLER CLOSING DELIVERIES, NEITHER SELLER, RADISSON, EXISTING MANAGER OR ANY OF THEIR AFFILIATES, NOR ANY OF THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, TRUSTEES, BENEFICIARIES, DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, ATTORNEYS, ACCOUNTANTS, CONTRACTORS, CONSULTANTS, AGENTS OR REPRESENTATIVES, NOR ANY PERSON PURPORTING TO REPRESENT ANY OF THE FOREGOING, HAVE MADE ANY REPRESENTATION, WARRANTY, GUARANTY, PROMISE, PROJECTION OR PREDICTION WHATSOEVER WITH RESPECT TO THE PROPERTY OR THE BUSINESS, WRITTEN OR ORAL, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, AND PURCHASER HEREBY WAIVES AND RELEASES SUCH WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES OR COVENANTS REFERRED TO IN SECTION 5.023 OF THE TEXAS PROPERTY CODE (OR ITS SUCCESSORS) WITH RESPECT TO THE PROPERTY OR ITS CONDITION OR THE CONSTRUCTION, PROSPECTS, OPERATIONS OR RESULTS OF OPERATIONS OF THE PROPERTY, OR ANY REPRESENTATION OR WARRANTY AS TO (A) THE CONDITION, SAFETY, QUANTITY, QUALITY, USE, OCCUPANCY OR OPERATION OF THE PROPERTY, (B) THE PAST, PRESENT OR FUTURE REVENUES OR EXPENSES WITH RESPECT TO THE PROPERTY OR THE BUSINESS, (C) THE COMPLIANCE OF THE PROPERTY OR THE BUSINESS WITH ANY ZONING REQUIREMENTS, BUILDING CODES OR OTHER APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT OF 1990, (D) THE ACCURACY OF ANY ENVIRONMENTAL REPORTS OR OTHER DATA OR INFORMATION SET FORTH IN SELLER DUE DILIGENCE MATERIALS PROVIDED TO PURCHASER WHICH WERE PREPARED FOR OR ON BEHALF OF SELLER, OR (E) ANY OTHER MATTER RELATING TO SELLER, THE PROPERTY OR THE BUSINESS. THIS SECTION 6.2 SHALL SURVIVE THE CLOSING.

**6.3 RELIANCE ON DUE DILIGENCE**. PURCHASER ACKNOWLEDGES AND AGREES THAT:

(a) PURCHASER HAD THE OPPORTUNITY TO CONDUCT ALL DUE DILIGENCE INSPECTIONS OF THE PROPERTY AND THE BUSINESS PRIOR TO THE

EFFECTIVE DATE, INCLUDING REVIEWING ALL SELLER DUE DILIGENCE MATERIALS AND OBTAINING ALL INFORMATION WHICH IT DEEMS NECESSARY TO MAKE AN INFORMED DECISION AS TO WHETHER IT SHOULD PROCEED WITH THE PURCHASE OF THE PROPERTY AND THE BUSINESS;

(b) PURCHASER IS SATISFIED WITH THE RESULTS OF ITS DUE DILIGENCE REVIEW OF THE PROPERTY AND THE BUSINESS CONDUCTED PRIOR TO THE EFFECTIVE DATE;

(c) PURCHASER WILL BE RELYING ONLY ON ITS DUE DILIGENCE INSPECTIONS OF THE PROPERTY AND THE BUSINESS, ITS REVIEW OF THE SELLER DUE DILIGENCE MATERIALS AND THE REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN THIS AGREEMENT OR IN THE SELLER CLOSING DOCUMENTS IN PURCHASING THE PROPERTY; AND

(d) PURCHASER IS NOT RELYING ON ANY STATEMENT MADE OR INFORMATION PROVIDED TO PURCHASER BY SELLER (EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN THIS AGREEMENT OR IN ANY SELLER CLOSING DELIVERIES), RADISSON, EXISTING MANAGER OR ANY OF THEIR AFFILIATES, OR ANY OF THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, TRUSTEES, BENEFICIARIES, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, ATTORNEYS, ACCOUNTANTS, CONTRACTORS, CONSULTANTS, AGENTS OR REPRESENTATIVES, OR ANY PERSON PURPORTING TO REPRESENT ANY OF THE FOREGOING. THIS SECTION 6.3 SHALL SURVIVE THE CLOSING.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES**

**7.1 Seller's Representations and Warranties.** To induce Purchaser to enter into this Agreement and to consummate the transaction described in this Agreement, Seller hereby makes the representations and warranties in this Section 7.1 as of the Effective Date, upon which Seller acknowledges and agrees that Purchaser is entitled to rely.

7.1.1. Organization and Power. Seller is duly formed (as the case may be), validly existing, in good standing in the jurisdiction of its incorporation or formation, and is qualified to do business in the jurisdiction in which the Property is located.

7.1.2. Authority and Binding Obligation. (i) Seller has full power and authority to execute and deliver this Agreement and all other documents to be executed and delivered by it pursuant to this Agreement at Closing (collectively, including this Agreement, the "Seller Closing Documents"), and to perform all obligations required of it under each of the Seller Closing Documents, (ii) the execution and delivery by the signer on behalf of Seller of each of the Seller Closing Documents, and the performance by Seller of its obligations under each of the Seller Closing Documents, has been duly and validly authorized by all necessary action by Seller, and (iii) each of the Seller Closing

Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Seller.

7.1.3. No Conflicts. Neither the execution and delivery by Seller of any of the Seller Closing Documents, nor the performance by Seller of any of its obligations under any of the Seller Closing Documents, nor the consummation by Seller of the transaction described in this Agreement will violate any provision of Seller's organizational or governing documents.

7.1.4. Title to Personal Property. Except as set forth in Schedule 7.1.4, Seller has not encumbered the tangible Personal Property (except encumbrances to be released at Closing) or sold its interest in the tangible Personal Property.

7.1.5. Condemnation. Seller has not received any written notice of any pending condemnation proceeding or other proceeding in eminent domain, and to Seller's Knowledge, no such condemnation proceeding or eminent domain proceeding is threatened affecting the Property or any portion thereof.

7.1.6. Litigation. Except as set forth in Schedule 7.1.6, Seller has not (i) been served with any court filing in any litigation with respect to the Property or the Business in which Seller is named a party which has not been resolved, settled or dismissed and as to which all resolution or settlement payments have not been made, or (ii) received written notice of any claim, charge or complaint from any Governmental Authority or other Person pursuant to, or to Seller's Knowledge, specifically threatening, any administrative, arbitration or similar adjudicatory proceeding with respect to the Property or the Business which has not been resolved, settled or dismissed and as to which all resolution or settlement payments have not been made.

7.1.7. Employees.

(a) Union Contracts. Neither Seller nor, to Seller's Knowledge, Existing Manager is a party to any collective bargaining agreement with any labor union with respect to the Employees.

(b) Employment Agreements. Except for the employment agreements set forth in Schedule 7.1.7 (the "Employment Agreements"), neither Seller nor, to Seller's Knowledge, Existing Manager is a party to any written employment or compensation agreements with any of the Employees. Seller has provided to Purchaser true, correct and complete copies of all of the Employment Agreements.

(c) Employees: To Seller's Knowledge, Schedule 7.1.7 contains a true, correct and complete list of the Employees, their respective positions, years of service, salaries and wage rates, benefits, accrued vacation and sick pay.

7.1.8. Taxes. Except as disclosed in Schedule 7.1.8, (i) all Taxes relating to any period prior to the Closing Date which would be delinquent if unpaid at Closing, and, if any such Taxes are payable in installments, any such installment which would otherwise be payable after the Closing Date, will be paid in full or prorated at Closing as part of the Prorations pursuant to Section 11.2,

and (ii) Seller has not received any written notice for an audit of any Taxes, special assessments or extraordinary taxes which has not been resolved or completed.

7.1.9. Licenses and Permits. Seller has made available to Purchaser a true and complete copy of the material Licenses and Permits. The material Licenses and Permits are in full force and effect. Except as set forth in Schedule 7.1.9, Seller has not received any written notice from any Governmental Authority or other Person of (i) any violation, suspension, revocation or non-renewal of any Licenses and Permits with respect to the Property or the Business that has not been cured or dismissed, or (ii) any failure by Seller to obtain any Licenses and Permits required for the Property or the Business that has not been cured or dismissed.

7.1.10. Tenant Leases. Schedule 7.1.10 sets forth a correct and complete list of the Tenant Leases, and Seller has made available to Purchaser a true and complete copy of all Tenant Leases. Except as set forth in Schedule 7.1.10, neither Seller, nor to Seller's Knowledge, Existing Manager, have given or received any written notice of any breach or default under any of the Tenant Leases.

7.1.11. Material Contracts. Schedule 7.1.11 sets forth a correct and complete list of the Material Contracts, and Seller has made available to Purchaser a true and complete copy of all Material Contracts. (The parties acknowledge that Schedule 7.1.11 may contain Contracts that are not Material Contracts.) The Material Contracts are in full force and effect. Except as set forth in Schedule 7.1.11, Seller has neither given nor received any written notice of any breach or default under any of the Material Contracts which has not been cured, and to Seller's Knowledge, no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default by Seller or the other party thereunder of a Material Contract.

7.1.12. Management Agreements. Seller is not a party to any management or franchise agreements with respect to the Hotel, other than as otherwise disclosed herein, that will not be terminated by Seller at Closing.

7.1.12. Finders and Investment Brokers. Except for Eastdil Secured, Seller has not dealt with any Person who has acted, directly or indirectly, as a broker or finder for or on behalf of Seller in connection with the transaction described by this Agreement in a manner which would entitle such Person to any fee or commission in connection with this Agreement or the transaction described in this Agreement.

7.1.14. Financial Statements. The financial statements for the years ended December 2013 and December 2014, and for the year to date through November 2015, with respect to the Business which were provided to Purchaser are in all material respects true and complete copies of the financial statements prepared by Seller or an Affiliate with respect to the Business.

7.1.15. No Violation of Anti-Terrorism Laws. None of Seller's property is subject to being "blocked" under any Anti-Terrorism Laws, and neither Seller nor, to Seller's Knowledge, any Person holding any direct or indirect interest in Seller is in violation of any Anti-Terrorism Laws.

7.1.16. Foreign Person. Seller is not a "foreign person" for purposes of the withholding provisions of Section 1445 of the Code.

7.1.17. Bankruptcy. There is no pending filing by or against Seller of a petition in bankruptcy under Applicable Law, or any pending filing by or against Seller of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Seller under any Applicable Law relating to bankruptcy, insolvency or other relief for debtors.

7.1.18. Liquor License. Seller and Liquor License Permittee represent that (a) the Liquor License is in the name of Liquor License Permittee, (b) neither Seller nor Liquor License Permittee have received any written notice that the Liquor License has been revoked (nor, to Seller's Knowledge are there any current proceedings to revoke same) and is in good standing, and (c) Seller has not received any written notice of any pending any administrative or enforcement case or action by the Texas Alcoholic Beverage Commission or any other Governmental Authority which alleges any violation by Seller or Liquor License Permittee.

7.1.19. Restaurant Management Agreement. Seller has provided a true, correct and complete copy of the Restaurant Management Agreement, as identified on Schedule 7.1.19. The Restaurant Management Agreement is in full force and effect. Except as set forth in Schedule 7.1.19, Seller has not received any written notice of any breach or default under the Restaurant Management Agreement which has not been cured, and to Seller's Knowledge, no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default of the Restaurant Management Agreement by Seller or the other party thereunder.

7.1.20. Starbucks License Agreement. Seller has provided true, correct and complete copy of the Starbucks License Agreement, as identified on Schedule 7.1.20. The Starbucks License Agreement is in full force and effect. Except as set forth in Schedule 7.1.20, Seller has not received any written notice of any breach or default under the Starbucks License Agreement which has not been cured, and to Seller's Knowledge, no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default of the Starbucks License Agreement by Seller or the other party thereunder.

7.1.21. Existing Management Agreement. Seller has provided a true, correct and complete copy of the Existing Management Agreement, as identified on Schedule 7.1.21. Except as set forth in Schedule 7.1.21, Seller has not received any written notice of any breach or default under the Existing Management Agreement which has not been cured, and to Seller's Knowledge, no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default of the Existing Management Agreement by Seller or the other party thereunder.

7.1.22. Radisson Franchise Agreement. Seller has provided a true, correct and complete copy of the Radisson Franchise Agreement, as identified on Schedule 7.1.22. Except as set forth in Schedule 7.1.22, Seller has not received any written notice of any breach or default under the Radisson Franchise Agreement which has not been cured, and the Seller's Knowledge, no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default of the Radisson Franchise Agreement by Seller or the other party thereunder.

7.1.23. Environmental.

(a) Seller has not received any written notice from a Governmental Authority of any violation of any Environmental Laws that has not been resolved or of any pending or threatened requests for information or inquiries or any investigation, action, suits, claims or proceedings relating to the existence, generations, release, disposal, migration or storage of hazardous substances in, on or under the Property.

(b) Seller has provided true, correct and complete copies of the environmental reports identified on Schedule 7.1.23 relating to the Property.

7.1.24. Bookings. Schedule 7.1.24 sets forth a true, correct and complete list of the current Bookings of greater than twenty-five (25) rooms per night for the Hotel.

7.1.25. MEP Contract. Seller has provided a true, correct and complete copy of the MEP Contract.

7.1.26. Seller's Knowledge Party. Seller represents that Tom Etheredge is the individual employed by Seller's Affiliate who is primarily responsible for the oversight and management of the Property for said Affiliate.

7.1.27. Personal Property. Seller represents that the Personal Property being conveyed pursuant to this Agreement constitutes (1) a whole business or (2) a separate division, branch, or identifiable segment of a business with attributable income and expenses that can be separately established from the books of account or records of the business.

Notwithstanding the foregoing, if Purchaser has Knowledge of a breach of any representation or warranty made by Seller in this Agreement prior to Closing, and Purchaser nevertheless proceeds to close the transaction described in this Agreement, then such representation or warranty by Seller shall be deemed to be qualified or modified to reflect Purchaser's Knowledge of such breach. Section 7.1.19, Section 7.1.20, Section 7.1.21, and Section 7.1.22, as applicable, will be deemed to be deleted from the Agreement for all purposes if Purchaser does not assume the Restaurant Management Agreement, Radisson Franchise Agreement, Existing Management Agreement or the Starbucks License Agreement, as applicable, at Closing.

**7.2 Purchaser's Representations and Warranties.** To induce Seller to enter into this Agreement and to consummate the transaction described in this Agreement, Purchaser hereby makes the representations and warranties in this Section 7.2 as of the Effective Date, upon which Purchaser acknowledges and agrees that Seller is entitled to rely.

7.2.1. Organization and Power. Purchaser is duly formed (as the case may be), validly existing and in good standing under the laws of the State of Delaware.

7.2.2. Authority and Binding Obligation. (i) Purchaser has full power and authority to execute and deliver this Agreement and will have full power and authority to execute and deliver all other documents to be executed and delivered by Purchaser pursuant to this Agreement at Closing (the "Purchaser Closing Documents"), and to perform all obligations of Purchaser arising under each of the Purchaser Closing Documents, (ii) the execution and delivery by the signer on behalf



of Purchaser of each of the Purchaser Closing Documents, and the performance by Purchaser of its obligations under each of the Purchaser Closing Documents, will have been duly and validly authorized by all necessary action by Purchaser, and (iii) each of the Purchaser Closing Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Purchaser.

7.2.3. No Conflicts. Neither the execution and delivery by Purchaser of any of the Purchaser Closing Documents, nor the performance by Purchaser of any of its obligations under any of the Purchaser Closing Documents, nor the consummation by Purchaser of the transaction described in this Agreement will violate any provision of the organizational or governing documents of Purchaser.

7.2.4. Finders and Investment Brokers. Except for Eastdil Secured Purchaser has not dealt with any Person who has acted, directly or indirectly, as a broker or finder for or on behalf of Purchaser in connection with the transaction described by this Agreement in any manner which would entitle such Person to any fee or commission in connection with this Agreement or the transaction described in this Agreement.

7.2.5. No Violation of Anti-Terrorism Laws. None of Purchaser's property is subject to being "blocked" under any Anti-Terrorism Laws, and neither Purchaser nor, to Purchaser's Knowledge, any Person holding any direct or indirect interest in Purchaser is in violation of any Anti-Terrorism Laws.

7.2.6. No Litigation. There is no action, suit, proceeding, inquiry or investigation (including any bankruptcy or other debtor relief proceeding), pending or to the knowledge of Purchaser threatened in writing, against Purchaser by or before any court or governmental authority that would prevent or hinder the performance by Purchaser of its obligations under this Agreement or the completion of the transactions contemplated by this Agreement.

7.2.7. Purchaser's Knowledge Party. Purchaser represents that Matthew Livian and Jesse Goepel are the individuals employed by Purchaser's Affiliate who are primarily responsible for the oversight and management of Purchaser's proposed acquisition of the Property for said Affiliate.

Notwithstanding the foregoing, if Seller has Knowledge prior to Closing of a breach of any representation or warranty made by Purchaser in this Agreement, and Seller nevertheless elects to close the transaction described in this Agreement, such representation or warranty by Purchaser shall be deemed to be qualified or modified to reflect Seller's Knowledge of such breach and Purchaser shall be deemed to have waived any and all claims against Seller arising out of the breach of representation in question.

## **ARTICLE VIII COVENANTS**

### **8.1 Confidentiality**

8.1.1. Disclosure of Confidential Information. Each of Seller and Purchaser shall keep confidential and not make any public announcement or disclose to any Person the existence or any terms of this Agreement and Purchaser shall keep confidential and not make any public

announcement or disclose to any Person any information disclosed by the Inspections or in the Seller Due Diligence Materials, the Purchaser Due Diligence Reports or any other documents, materials, data or other information with respect to the Property, the Business or the business or assets of Seller's Affiliates or related companies which is not generally known or otherwise available to the public (the "Confidential Information"). Notwithstanding the foregoing, each of Seller and Purchaser shall be permitted to (i) disclose any Confidential Information to the extent required under Applicable Law (including by way of legal process), or (ii) disclose any Confidential Information to any Person on a "need to know" basis, such as Purchaser's and Seller's shareholders, partners, members, trustees, beneficiaries, directors, officers, employees, attorneys, consultants, engineers, surveyors, lenders, investors, managers and franchisors (in each case, current or prospective) and to the extent such disclosures to any of the foregoing is required to consummate the transactions described in this Agreement; provided, however, that (1) Seller and Purchaser shall (A) advise such Person of the confidential nature of such Confidential Information, and (B) use commercially reasonable efforts to cause such Person to maintain the confidentiality of such Confidential Information and (2) Purchaser shall not disclose any information relating to Radisson to any other franchisor that is confidential pursuant to the Radisson Franchise Agreement. Each party shall be liable to the other party and Purchaser if such Person discloses the Confidential Information. This Section 8.1.1 shall survive the termination of this Agreement.

8.1.2. Public Announcements. Notwithstanding Section 8.1.1, each party may make a press release or public announcement regarding the transaction described in this Agreement, provided they confer with the other party; however, Seller shall not include the name of Purchaser or Purchaser's Affiliates in any such release or announcement. Either party may include a copy of the Agreement in any filings required by Applicable Law in accordance with applicable securities rules and regulations.

8.1.3. Communication with Governmental Authorities. Without limiting the generality of the provisions in Section 8.1.1 and except as otherwise permitted or required by this Agreement, Purchaser shall not, through its officers, employees, managers, contractors, consultants, agents, representatives or any other Person (including, without limitation, Purchaser's Inspectors), directly or indirectly, communicate with any Governmental Authority or any official, employee or representative thereof, involving any matter with respect to the Property or the Business without Seller's prior written consent, which may be withheld in Seller's sole discretion. Notwithstanding the foregoing, Purchaser and its representatives and consultants shall have the right, without any requirement to obtain the consent of Seller, to (i) review building department, health department and other local Governmental Authority records with respect to the Real Property and the operation of the Business and to request confirmations or certifications from zoning or land use authorities or departments regarding the compliance of the Property with zoning and land use laws, and (ii) apply to the applicable Governmental Authority for any licenses or permits necessary or desirable for the Purchaser's continued operation of the Business after the Closing.

8.1.4. Communication with Employees. Without limiting the generality of the provisions in Section 8.1.1 and except in connection with Purchaser's Inspections, Purchaser shall not, through its officers, employees, managers, contractors, consultants, agents, representatives or any other Person (including, without limitation, Purchaser's Inspectors), directly or indirectly, communicate

with any Employees or any Person representing any Employees involving any matter with respect to the Property or the Business, the Employees or this Agreement, without Seller's prior written consent, which consent may be withheld in Seller's sole discretion; provided, however, that, commencing ten (10) days prior to the anticipated Closing Date, Seller will cooperate to provide Purchaser reasonable access to interview the Employees for future employment at the Hotel.

## **8.2 Conduct of the Business.**

8.2.1. Operation in Ordinary Course of Business. From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall conduct the Business in the Ordinary Course of Business, including, without limitation, (i) maintaining or causing the Existing Manager to maintain the inventories of FF&E, Supplies, F&B and Retail Merchandise at levels maintained in the Ordinary Course of Business, (ii) performing or causing the Existing Manager to perform maintenance and repairs for the Real Property and tangible Personal Property in the Ordinary Course of Business; and (iii) maintaining insurance coverages consistent with Seller's previous risk management policies. From the Effective Date until Closing or termination of this Agreement, Seller will not: (a) create or grant any encumbrances to title to the Real Property, (b) apply for or consent to any change to the zoning classification of the Real Property, (c) perform any capital improvements to the Improvements other than maintenance or repair of the Improvements in the Ordinary Course of Business, or (d) remove, or consent to the removal of, any Personal Property from the Property, except for repair or replacement thereof in the Ordinary Course of Business.

8.2.2. Contracts. Except as provided in Sections 8.2.3, 8.2.4 and 8.2.5, from the Effective Date until the Closing or earlier termination of this Agreement, Seller shall not (nor shall Seller permit Existing Manager to), without Purchaser's prior written consent which shall not be unreasonably withheld, conditioned or delayed, (i) amend, extend, or renew (except pursuant to renewal rights in favor of then applicable tenant or counterparty expressly set forth in a Tenant Lease or Material Contract) any existing Tenant Leases, Material Contracts or Licenses and Permits or, except in the Ordinary Course of Business, terminate any of the foregoing for uncured defaults of the applicable counterparty, nor (ii) enter into any new Tenant Leases or Material Contracts, unless, in the case of such new Material Contracts or Parking Garage license agreements, the same are terminable by Purchaser without any termination fee upon not more than thirty (30) days' notice.

8.2.3. The Existing Management Agreement. Seller shall not, without Purchaser's prior written consent, amend the Existing Management Agreement. Purchaser intends to assume the Existing Management Agreement as of Closing pursuant to a presently effective, unconditional assignment and assumption agreement, however, if Purchaser does not assume the Existing Management Agreement as of Closing, Seller will terminate the Existing Management Agreement at Purchaser's sole cost and expense. Purchaser shall provide written notice to Seller of Purchaser's election to assume or terminate the Existing Management Agreement at least ten (10) days prior to the Closing Date. The provisions of this Section 8.2.3 will survive Closing.

8.2.4. Radisson Franchise Agreement. Seller shall not, without Purchaser's prior written consent, amend the Radisson Franchise Agreement. At Closing, Seller shall terminate the Radisson Franchise Agreement at Purchaser's sole cost and expense. If Purchaser desires to continue to operate the Hotel as a Radisson hotel after Closing, it shall be responsible for making such arrangements

with Radisson; provided, however, that Seller shall provide such information in Seller's possession or control as may be reasonably requested by Radisson or Purchaser in the application of a franchise agreement with Radisson in connection with the Hotel. In the event the Purchaser does not enter into a franchise agreement with Radisson, then Purchaser shall be responsible, at Purchaser's sole cost, for any de-identification or other actions required pursuant to and in accordance with a termination of the Radisson Franchise Agreement. Purchaser shall indemnify Seller for any costs, expenses or other fees assessed by Radisson or repairs required by Radisson in connection with the termination of the Radisson Franchise Agreement (other than with respect to accrued and/or past-due license fees). Seller will not agree with Radisson to incur any additional costs that Purchaser would be required to pay pursuant to the preceding two sentences that are not contemplated by the Radisson Franchise Agreement without Purchaser's prior written consent. The provisions of this Section 8.2.4 will survive Closing.

8.2.5. Restaurant Management Agreement. Seller shall not, without Purchaser's prior written consent, amend the Restaurant Management Agreement. At Closing, Seller, at Purchaser's sole option, shall either (1) terminate the Restaurant Management Agreement at Purchaser's sole cost and expense, or (2) assign the Restaurant Management Agreement to Purchaser. If Purchaser does not notify Seller in writing by the tenth (10<sup>th</sup>) day prior to the Closing Date of Purchaser's election in the preceding sentence, then Purchaser will be deemed to have elected option (2). The provisions of this Section 8.2.5 will survive Closing.

### **8.3 Licenses and Permits.**

8.3.1. Licenses and Permits. Purchaser shall be responsible for obtaining the transfer of all Licenses and Permits (to the extent transferable) or the issuance of new licenses and permits, including, without limitation, the licenses and permits required for the sale and service of alcoholic beverages at the Hotel (the "Liquor Licenses"). Purchaser, at its cost and expense, shall submit all necessary applications and other materials to the appropriate Governmental Authority and take such other actions to effect the transfer of Licenses and Permits or issuance of new licenses and permits, including, without limitation, the Liquor Licenses, as of the Closing, and Seller shall use commercially reasonable efforts, including causing Liquor License Permittee to use commercially reasonable efforts, (at no liability, cost or expense to Seller or Liquor License Permittee other than any de minimis cost or expense or any cost or expense which Purchaser agrees in writing to reimburse) to cooperate with Purchaser to cause the Licenses and Permits to be transferred or new licenses and permits to be issued to Purchaser or its designee. Notwithstanding anything to the contrary in this Section 8.3, Purchaser and/or its designee shall not file any application or otherwise commence any procedure or proceeding with any Governmental Authority for the transfer of any Licenses or Permits or issuance of new licenses and permits, or post any notices at the Hotel or publish any notices required for the transfer of the Licenses or Permits or issuance of new licenses and permits, including, without limitation, the Liquor Licenses, that will be effective prior to Closing, without the prior written consent of Seller. If this Agreement is terminated and Purchaser has filed an application or otherwise commenced the processing of obtaining new licenses and permits, Purchaser shall promptly withdraw all such applications and cease all other activities with respect to such new licenses and permits. If Purchaser is unable to obtain the Liquor Licenses for the Hotel prior to Closing, Liquor License Permittee and Purchaser shall enter into a Beverage Services

Agreement in the form of Exhibit F (the “Beverage Services Agreement”) pursuant to which Purchaser shall manage the purchase, sale and service of alcoholic beverages at the Hotel for Liquor License Permittee to the extent permitted under Applicable Law in accordance with the terms of the Beverage Services Agreement.

8.3.2. No Closing Condition. Without limiting the obligations of the Parties under Section 9.3.1 (including Seller’s obligation to cause the execution and delivery of the Beverage Services Agreement), the Parties do hereby specifically acknowledge and agree that to the extent the Liquor Licenses are not transferable or have not been effectively transferred to Purchaser on the Closing Date, such failure shall not constitute a Purchaser Closing Condition Failure, shall not affect in any manner whatsoever the Closing, and the Closing shall proceed without any delay or interruption whatsoever.

8.3.3. Starbucks License Agreement. Within five (5) Business Days after the Effective Date, Seller shall request Starbucks’s consent to assign the Starbucks License Agreement to Purchaser. If Starbucks rejects such assignment or if Purchaser does not desire to assume the Starbucks License Agreement with the changes required by Starbucks, if any, then Seller will terminate the Starbucks License Agreement at Closing at Purchaser’s sole cost and expense. If Starbucks and Purchaser approve the assignment, then at Closing Seller will assign the Starbucks License Agreement to Purchaser, with any changes to the Starbucks License Agreement required by Starbucks. If Starbucks has not consented or rejected the assignment by Closing, then at Closing Purchaser and Seller will enter into a temporary license agreement allowing Seller to use the portion of the Real Property necessary for Seller to continue to operate the existing Starbucks’s coffee shop after Closing and a temporary management agreement for Purchaser to manage the Starbucks’s coffee shop for Seller until Starbucks consents to the assignment or Purchaser or Starbucks rejects the assignment (collectively, the “Temporary Starbucks Agreements”). The Temporary Starbucks Agreements will terminate no later than one hundred eighty (180) days after the Closing Date. The Parties intend that Seller will not incur any cost or expense that is not reimbursed by Purchaser to operate the Starbucks under the Temporary Starbucks Agreements.

#### **8.4 Employees**

8.4.1. Seller shall cause Existing Manager to terminate the employment of all Employees effective as of the Closing, and Purchaser shall cause New Manager to offer employment to such terminated Employees on the same terms and conditions of employment as their current employment as necessary to avoid any violations of the WARN Act. **PURCHASER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE SELLER INDEMNITEES IN ACCORDANCE WITH ARTICLE XV FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY OF THE SELLER INDEMNITEES UNDER THE WARN ACT WITH RESPECT TO THE EMPLOYEES.** Purchaser shall provide written notice to Seller promptly after Closing listing any Employees not rehired by Purchaser (or New Manager) as a result of such Employees not accepting such offer.

8.4.2. Purchaser shall have no duty, obligation or liability to any Employee with respect to any and all obligations and liabilities, actual or contingent, with respect to Employees arising from their employment relationship with Existing Manager prior to the Closing, including any and

all obligations or liabilities: (i) for wages, salaries, accrued vacation, medical insurance, fringe benefits, and payroll taxes; (ii) for workers' compensation claims based on any real or alleged occurrence; (iii) for retirement benefits and employer contributions to pension plans; and (iv) for claims or penalties under applicable laws governing employer/employee relations (including the National Labor Relations Act and other labor relations laws, wage, hours and employment standards laws, fair employment practices and anti-discrimination laws, the Employee Retirement Income Security Act, the Multi-Employer Pension Plan Amendments Act, and the Consolidated Omnibus Budget Reconciliation Act of 1985) and (v) any other obligations and liabilities allocated to Seller pursuant to this Agreement ("Pre-Closing Employee Obligations") and, except as expressly provided for herein, such obligations shall be the sole responsibility of Seller. Seller shall indemnify, defend and hold the Purchaser Indemnitees, and each of them, harmless from and against any and all losses, damages, liabilities, taxes and sanctions arising from or relating to (a) any violation (or alleged violation) by Seller of any law governing employment matters with respect to Employees occurring prior to the Closing Date, and (b) any claims asserted by any Employees or Existing Manager based upon any Pre-Closing Employee Obligations. If there is a conflict between the provisions of Section 8.4.2 and 8.4.1, the provisions of Section 8.4.1 will control.

8.4.3. Seller shall have no duty, obligation or liability to any Employee with respect to any and all obligations and liabilities, actual or contingent, with respect to Employees arising from their employment relationship with Existing Manager, Purchaser or any New Manager from or after Closing, including any and all obligations or liabilities: (i) for wages, salaries, accrued vacation, medical insurance, fringe benefits, and payroll taxes; (ii) for workers' compensation claims based on any real or alleged occurrence; (iii) for retirement benefits and employer contributions to pension plans; and (iv) for claims or penalties under applicable laws governing employer/employee relations (including the National Labor Relations Act and other labor relations laws, wage, hours and employment standards laws, fair employment practices and anti-discrimination laws, the Employee Retirement Income Security Act, the Multi-Employer Pension Plan Amendments Act, and the Consolidated Omnibus Budget Reconciliation Act of 1985) and (v) any other obligations and liabilities allocated to Purchaser pursuant to this Agreement ("Post-Closing Employee Obligations") and, except as expressly provided for herein, such obligations shall be the sole responsibility of Purchaser. Purchaser shall indemnify, defend and hold the Seller Indemnitees, and each of them, harmless from and against any and all losses, damages, liabilities, taxes and sanctions arising from or relating to (a) any violation (or alleged violation) by Purchaser of any law governing employment matters with respect to Employees occurring on or after the Closing Date, and (b) any claims asserted by any Employees or Existing Manager based upon any Post-Closing Employee Obligations.

8.4.4. Section 8.4 shall survive the Closing.

**8.5 Bookings.** Purchaser shall (or shall cause New Manager to) honor all Bookings made prior to the Closing Date in the Ordinary Course of Business for any period on or after the Closing Date, and Seller shall provide, or cause Existing Manager to provide, any information in their possession or control required of Purchaser to honor such Bookings. Notwithstanding the foregoing, Purchaser shall have the right to approve, in its sole discretion, any group Bookings of greater than twenty-five (25) rooms per night, which group Bookings occur in the year 2017 or beyond. With respect to Purchaser's approval right described in the preceding sentence, Purchaser will have twenty-four

(24) hours from Seller's written request to approve said bookings and will be deemed to approve a booking if Purchaser does not notify Seller of its disapproval in writing within said twenty-four (24) hour period. This Section 8.5 shall survive the Closing.

## **8.6 Tax Contests.**

8.6.1. Taxable Period Terminating Prior to Closing Date. Seller shall retain the right to commence, continue and settle any proceeding to contest any Taxes for any taxable period which terminates prior to the Closing Date, and shall be entitled to any refunds or abatements of Taxes for such periods prior to the Closing Date awarded in such proceedings. This Section 8.6.1 shall survive the Closing.

8.6.2. Taxable Period Including the Closing Date. Purchaser shall have the right to commence and settle any proceeding to contest any Taxes for any taxable period which includes the Closing Date and Seller shall not have the right to contest such Taxes. Any refunds or abatements awarded in such proceedings shall be used first to reimburse Purchaser for the reasonable costs and expenses incurred by Purchaser in contesting such Taxes, and the remainder of such refunds or abatements shall be prorated between Seller and Purchaser as of the Cut-Off Time, and Purchaser receiving such refunds or abatements promptly shall pay such prorated amount due to Seller. This Section 8.6.2 shall survive the Closing.

8.6.3. Taxable Period Commencing After Closing Date. Purchaser shall have the right to commence, continue and settle any proceedings to contest Taxes for any taxable period which commences after the Closing Date, and shall be entitled to any refunds or abatements of Taxes awarded in such proceedings. This Section 8.6.3 shall survive the Closing.

8.6.4. Cooperation. Seller and Purchaser shall use commercially reasonable efforts to cooperate with the Party contesting the Taxes (at no cost or expense to the Party not contesting the Taxes other than any de minimis cost or expense or any cost or expense which the requesting Party agrees in writing to reimburse) and to execute and deliver any documents and instruments reasonably requested by the Party contesting the Taxes in furtherance of the contest of such Taxes. This Section 8.6.4 shall survive the Closing.

8.6.5. Tax Clearance Certificates. After the Effective Date, at Purchaser's request Seller shall apply for and obtain a "Certificate of No Tax Due" from the Texas Office of the Comptroller (or such other tax clearance certificate or letters from any Governmental Authority) (the "Tax Clearance Certificate") relating to sales, occupancy, use and franchise taxes relating to the Business. Seller's failure to receive any of the items in the preceding sentence will not be a Seller default under this Agreement nor will their receipt be a condition to any of Purchaser's obligations under this Agreement, provided that, if the Tax Clearance Certificate is not obtained prior to the Closing, then the parties shall nevertheless be obligated to close the transactions contemplated by this Agreement and Seller shall indemnify Purchaser Indemnitees with respect to any sales, occupancy, use and franchise taxes due from Seller's period of ownership of the Property. Seller's indemnity herein will terminate and be of no force and effect upon the earlier of (i) the termination of the Survival Period or (ii) the obtaining of the Tax Clearance Certificate. This Section 8.6.5 does not apply to any Personal Property Sales Taxes, which are governed by Section 11.4.2.

**8.7 Notices and Filings.** Seller and Purchaser shall use commercially reasonable efforts to cooperate with each other (at no cost or expense to the Party whose cooperation is requested, other than any de minimis cost or expense or any cost or expense which the requesting Party agrees in writing to reimburse) to provide written notice to any Person under any Tenant Leases, Contracts, and Licenses and Permits, and to effect any registrations or filings with any Governmental Authority or other Person, regarding the change in ownership of the Property or the Business. This Section 8.7 shall survive the Closing.

**8.8 Access to Information.** After the Closing, Purchaser shall provide to the officers, employees, agents and representatives of any of the Seller Indemnitees reasonable access to (i) the Books and Records with respect to the Hotel, (ii) the Property and (iii) the employees at the Hotel, for any purpose deemed necessary or advisable by Seller, including, without limitation, to prepare any documents required to be filed by Seller under Applicable Law (including securities laws) or to investigate, evaluate and defend any claim, charge, audit, litigation or other proceeding made by any Person or insurance company; provided, however, that (A) such Seller Indemnitees shall provide reasonable prior notice to Purchaser; (B) Purchaser shall not be required to provide such access during non-business hours; (C) Purchaser shall have the right to accompany the officer, employees, agents or representatives of such Seller Indemnitees in providing access to the Books and Records, the Property or the employees of Purchaser (or Purchaser's manager) as provided in this Section 8.8; and (D) Purchaser shall not be required to provide such access to materials or information to the extent the same (x) are legally privileged or constitute attorney work product, (y) are subject to a confidentiality agreement or to Applicable Law prohibiting their disclosure by Purchaser, or (z) constitute confidential internal assessments, reports, studies, memoranda, notes or other correspondence prepared by or on behalf of any officer or employee of Purchaser; and (E) **PURCHASER, AT ITS COST AND EXPENSE, SHALL RETAIN ALL BOOKS AND RECORDS WITH RESPECT TO THE HOTEL FOR A PERIOD OF FOUR (4) YEARS AFTER THE CLOSING.** This Section 8.8 shall survive the Closing.

**8.9 Privacy Laws.** To the extent Purchaser reviews, is given access to or otherwise obtains any Hotel Guest Information or Hotel Guest Data as part of the purchase of the Property and the Business, Purchaser shall at all times comply in all material respects with all Applicable Law concerning (i) the privacy and use of such Hotel Guest Information and Hotel Guest Data and the sharing of such information and data with third parties (including, without limitation, any restrictions with respect to Purchaser's or any third party's ability to use, transfer, store, sell, or share such information and data), and (ii) the establishment of adequate security measures to protect such Hotel Guest Information and Hotel Guest Data. This Section 8.9 shall survive the Closing.

**8.10 Further Assurances.** From the Effective Date until the Closing or termination of this Agreement, Seller and Purchaser shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate the transaction described in this Agreement, including, without limitation, (i) obtaining all necessary consents, approvals and authorizations required to be obtained from any Governmental Authority or other Person under this Agreement or Applicable Law, and (ii) effecting all registrations and filings required under this Agreement or Applicable Law. After the Closing, Seller and Purchaser shall use commercially reasonable efforts (at no liability, cost or expense to such Party, other than



any de minimis cost or expense or any cost or expense which the requesting Party agrees in writing to reimburse) to further effect the transaction contemplated in this Agreement. The immediately preceding sentence of this Section 8.10 shall survive the Closing.

## **ARTICLE IX CLOSING CONDITIONS**

### **9.1 Mutual Closing Conditions.**

9.1.1. Satisfaction of Mutual Closing Conditions. The respective obligations of Seller and Purchaser to close the transaction contemplated in this Agreement are subject to the satisfaction at or prior to Closing of the following conditions precedent (the “Mutual Closing Conditions”):

(a) Adverse Proceedings. No litigation or other court action shall have been commenced seeking to obtain an injunction or other relief from such court to enjoin the consummation of the transactions described in this Agreement, and no preliminary or permanent injunction or other order, decree or ruling shall have been issued by a court of competent jurisdiction or by any Governmental Authority, that would make illegal or invalid or otherwise prevent the consummation of the transactions described in this Agreement.

(b) Adverse Law. No Applicable Law shall have been enacted that would make illegal or invalid or otherwise prevent the consummation of the transactions described in this Agreement.

9.1.2. Failure of Mutual Closing Condition. If any of the Mutual Closing Conditions is not satisfied at Closing, then each Party shall have the right to terminate this Agreement by providing written notice to the other Party, in which case:

(a) the Earnest Money, less the Independent Consideration, shall be refunded to Purchaser in accordance with Section 3.2.4;

(b) following the release of the Earnest Money, the Parties shall have no further rights or obligations under this Agreement, except for those which expressly survive such termination.

### **9.2 Purchaser Closing Conditions.**

9.2.1. Satisfaction of Purchaser Closing Conditions. In addition to the Mutual Closing Conditions, Purchaser’s obligations to close the transactions described in this Agreement are subject to the satisfaction at or prior to Closing of the following conditions precedent (the “Purchaser Closing Conditions”):

(a) Seller’s Deliveries. All of the Seller Closing Deliveries shall have been delivered to Purchaser or deposited with Escrow Agent in the Closing Escrow to be delivered to Purchaser at Closing.

(b) Representations and Warranties. The representations or warranties of Seller in this Agreement (as qualified by any updated schedules to this Agreement and any amendments or supplements to such schedules) shall be true and correct as of the Closing (or as of such other date to which such representation or warranty expressly is made), except to the extent any breach of such representations or warranties would (i) subject to Section 9.2.3 below, not have a material adverse effect on Purchaser's ownership of the Property or the conduct of the Business upon Closing (meaning such breach would result in Purchaser incurring additional expenses or liabilities in the amount of \$2,000,000.00 or more) or (ii) prevent Seller from consummating the transaction described in this Agreement.

(c) Title Policy. The Title Company shall have committed to issue the Title Policy pursuant to Section 5.4.

9.2.2. Failure of Purchaser Closing Condition. Except as expressly provided in Section 9.4, if any of the Purchaser Closing Conditions is not satisfied at Closing, then Purchaser shall, as Purchaser's sole and exclusive remedy, have the right, by providing written notice to Seller, to (i) subject to Seller's right to cure under Section 13.2 and to the remedies available to Purchaser in the event the failure of such Purchaser Closing Condition is due to a default hereunder by Seller pursuant to Section 13.2, to terminate this Agreement, in which case the Earnest Money, less the Independent Consideration, shall be refunded to Purchaser in accordance with Section 3.2.4, and the Parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination, or (ii) to waive any of the Purchaser Closing Conditions at or prior to Closing. Notwithstanding the foregoing, if there is a Condemnation of all or any portion of the Real Property prior to Closing which makes Seller's representation and warranty in Section 7.1.5 hereof untrue or inaccurate at Closing, Purchaser's sole and exclusive remedy shall be as set forth in Section 14.2.

9.2.3. Immaterial Representation or Warranty. If a representation or warranty of Seller in this Agreement (as qualified by any updated schedules to this Agreement and any amendments or supplements to such schedules) is not true and correct as of the Closing (or as of such other date to which such representation or warranty expressly is made), and such failure would result in Purchaser incurring additional expenses or liabilities in an amount less than \$2,000,000 and would not prevent Seller from consummating the transaction described in this Agreement, then the Purchase Price will be reduced by the amount of the additional expense or liability caused by such representation or warranty not being true and correct as of the Closing that Purchaser would not otherwise have incurred if said representation and warranty had been true and correct as of the Closing.

### **9.3 Seller Closing Conditions**

9.3.1. Satisfaction of Seller Closing Conditions. In addition to the Mutual Closing Conditions, Seller's obligations to close the transactions contemplated in this Agreement are subject to the satisfaction at or prior to Closing of the following conditions precedent (the "Seller Closing Conditions"):

(a) Board Approval. The Board of Directors of Seller or of its direct or indirect ownership shall have approved the consummation of the transactions contemplated by this Agreement by no later than ten (10) days after the Effective Date.

(b) Receipt of the Purchase Price. Purchaser shall have deposited with Escrow Agent the Purchase Price (as adjusted pursuant to Section 3.1).

(c) Purchaser's Deliveries. All of the Purchaser Closing Deliveries shall have been delivered to Purchaser or deposited with Escrow Agent in the Closing Escrow to be delivered to Seller at Closing.

(d) Representations and Warranties. The representations and warranties of Purchaser in this Agreement shall be true and correct in all material respects as of the Closing (or as of such other date to which such representation or warranty expressly is made).

(e) Radisson Franchise Agreement. The Radisson Franchise Agreement shall be terminated, as of the Closing Date.

9.3.2. Failure of Seller Closing Condition. Except as expressly provided in Section 9.4, if any of Seller Closing Conditions is not satisfied at Closing, then Seller shall, as Seller's sole and exclusive remedy, have the right to (i) terminate this Agreement by providing written notice to Purchaser, in which case the Earnest Money shall be refunded to Purchaser, less the Independent Consideration in accordance with Section 3.2.4, if the Seller Closing Condition not satisfied is condition (a) or (e) above, or disbursed to Seller in accordance with Section 3.2.3 if the Seller Closing Condition not satisfied is any of conditions (b), (c), or (d) above, and in any case the Parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination, or (iii) waive any of the Seller Closing Conditions at or prior to Closing.

**9.4 Waiver of Closing Conditions.** The Closing shall constitute conclusive evidence that the Parties have waived any conditions which are not satisfied as of the Closing.

## ARTICLE X CLOSING

**10.1 Closing Date.** The closing of the transactions described in this Agreement (the "Closing") shall occur on or before April 5, 2016 (the date on which the Closing occurs is referred to herein as the "Closing Date"). Purchaser will have the one time right to extend the Closing Date for up to thirty (30) days by notifying Seller in writing and depositing \$2,500,000 of additional Earnest Money (the "Extension Deposit") with the Escrow Agent, both of which must occur at least five (5) days prior to the then scheduled Closing Date. The Closing shall be effected through the Closing Escrow as provided in Section 10.2 and shall occur at the offices of Escrow Agent or such other place as agreed to in writing between Seller and Purchaser.

**10.2 Closing Escrow.** The Title Company will close escrow (the "Closing Escrow") on the Closing Date if all of the Seller Closing Conditions and Purchaser Closing Conditions have been satisfied and the Title Company has received all Seller Closing Deliveries and Purchaser Closing Deliveries by (1) delivering the Deed for recording, with instructions to deliver the Deed to Purchaser after recording, (2) paying Seller the Purchase Price net of adjustments for prorations and other items charged or credited to Seller in accordance with this Agreement, (3) delivering fully executed

originals of the closing documents (other than the Deed) to Seller and, and (4) delivering copies of the fully executed closing documents (other than the Deed) to Purchaser.

### **10.3 Closing Deliveries.**

10.3.1. Seller's Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Purchaser or deposited with Escrow Agent in the Closing Escrow to be delivered to Purchaser at Closing, all of the (i) documents set forth in this Section 10.3.1, each of which shall have been duly executed by Seller and acknowledged (if required), and (ii) other items set forth in this Section 10.3.1 (the "Seller Closing Deliveries"), as follows:

- (a) Authority documents reasonably requested by Title Company and Purchaser.
- (b) Special warranty deed in the form of Exhibit C conveying the Real Property to Purchaser, subject to the Permitted Exceptions (the "Deed");
- (c) A Bill of Sale in the form of Exhibit D, transferring the FF&E, Supplies, IT Systems, F&B, Retail Merchandise, Intellectual Property, Books and Records, Plans and Specifications, Warranties, Bookings and Purchased Accounts Receivable to Purchaser on the terms set forth therein;
- (d) An Assignment and Assumption of Leases, Contracts and Licenses and Permits in the form of Exhibit E, assigning the Tenant Leases, Equipment Leases, Operating Agreements, and Licenses and Permits to Purchaser on the terms set forth therein;
- (e) A certificate or registration of title for any owned vehicle or other Personal Property included in the Property which requires such certification or registration, duly executed, conveying such vehicle or such other Personal Property to Purchaser;
- (f) Owner's affidavit in the form of Exhibit B;
- (g) Any real estate transfer tax declarations or similar documents required under Applicable Law in connection with the conveyance of the Real Property;
- (h) FIRPTA affidavits from Seller in the form set forth in the regulations under Section 1445 of the Code;
- (i) To the extent not previously delivered to Purchaser, all originals (or copies if originals are not available) of the Tenant Leases, Contracts, Licenses and Permits, Books and Records, keys and lock combinations in Seller's Possession, which shall be located at the Hotel on the Closing Date and deemed to be delivered to Purchaser upon delivery of possession of the Hotel; provided, however, that Seller shall have the right to (i) redact and reformat any Books and Records which include data or other information pertaining to any other hotels owned, managed or franchised by Seller, Radisson or their Affiliates, and (ii) retain copies of any Books and Records delivered to Purchaser;
- (j) The Closing Statement prepared pursuant to Section 11.1;

(k) A Termination of Radisson Franchise Agreement executed by Radisson and Seller;

(l) A Termination of the Existing Management Agreement executed by Existing Manager and Seller or a presently effective, unconditional assignment and assumption of the Existing Management Agreement, as applicable;

(m) Either (1) a Termination of the Restaurant Management Agreement executed by Seller, Existing Manager and Restaurant License Permittee, or (2) Exhibit E will be modified to include an assignment of the Restaurant Management Agreement executed by Seller, Existing Manager and Restaurant License Permittee;

(n) One of the following, as applicable, (1) a Termination of the Starbucks License Agreement executed by Starbucks and Seller, (2) Exhibit E will be modified to include an assignment of the Starbucks License Agreement, or (3) the Temporary Starbucks Agreements;

(o) The Beverage Services Agreement in the form attached hereto as Exhibit F, if applicable;

(p) A certificate from Seller remaking, as of the Closing Date, the representations and warranties of Seller as required by Section 9.2.1(b);

(q) A completed Statement of Occasional Sale form in the attached Schedule 10.3.1 with Seller selecting the option on said form stating "I certify that I sold the entire operating assets of (1) a whole business or (2) a separate division, branch, or identifiable segment of a business with attributable income and expenses that can be separately established from the books of account or records of the business;"

(r) Evidence (which evidence may be identification as a "Seller charge" line item on the Closing Statement) of payment by Seller of \$50,000 to Existing Manager pursuant to Paragraph 4 of the Acknowledgement of and Consent to Assignment of Hotel Services Agreement dated as of February 4, 2016 between Seller and Existing Manager; and

(s) Such other documents and instruments as may be reasonably requested by Purchaser or Title Company in order to consummate the transaction described in this Agreement, at no cost or liability to Seller.

10.3.2. Purchaser's Deliveries. At the Closing, Purchaser shall deliver or cause to be delivered to Seller or deposited with Escrow Agent in the Closing Escrow to be delivered to Seller all of the (i) documents set forth in this Section 10.3.2, each of which shall have been duly executed by Purchaser and acknowledged (if required), and (ii) other items set forth in this Section 10.3.2 (the "Purchaser Closing Deliveries"), as follows:

(a) The Purchase Price (as adjusted pursuant to Section 3.1) to be paid by Purchaser in accordance with Section 3.3;

(b) Authority documents reasonably requested by Title Company;

(c) A counterpart of each of the documents and instruments to be delivered by Seller under Section 10.3.1 which require execution by Purchaser or an Affiliate of Purchaser; and

(d) Such other documents and instruments as may be reasonably requested by Seller or the Title Company, at no cost or liability to Seller.

**10.4 Possession.** Seller shall deliver possession of the Real Property, subject to the Permitted Exceptions, and tangible Personal Property to Purchaser upon completion of the Closing.

## **ARTICLE XI PRORATIONS AND EXPENSES**

**11.1 Closing Statement.** No later than two (2) Business Days prior to Closing, the Parties, through their respective employees, agents or representatives, jointly shall make such examinations, audits and inventories of the Hotel as may be necessary to make the adjustments and prorations to the Purchase Price as set forth in Sections 11.2 and 11.3 or any other provisions of this Agreement. Based upon such examinations, audits and inventories, the Parties jointly shall prepare prior to Closing a closing statement (the "Closing Statement"), which shall set forth their best estimate of the amounts of the items to be adjusted and prorated under this Agreement. The Closing Statement shall be approved and executed by the Parties at Closing, and such adjustments and prorations shall be final with respect to the items set forth in the Closing Statement, except to the extent any such items shall be reprorated after the Closing as expressly set forth in Section 11.2.

**11.2 Prorations.** The items of revenue and expense set forth in this Section 11.2 shall be prorated between the Parties (the "Prorations") as of 11:59 p.m. on the Closing Date (the "Cut-Off Time"), or such other time expressly provided in this Section 11.2, so that the Closing Date is a day of income and expense for Seller.

11.2.1. Taxes. All Taxes (other than those as set forth in Section 11.4) shall be prorated as of the Cut-Off Time between Seller and Purchaser. If the amount of any such Taxes is not ascertainable on the Closing Date, the proration for such Taxes shall be based on the most recent available bill; provided, however, that after the Closing, Seller and Purchaser shall reprorate the Taxes and pay any deficiency in the original proration to the other Party promptly upon receipt of the actual bill for the relevant taxable period. This Section 11.2.1 shall survive the Closing.

11.2.2. Tenant Leases. Any rents and other amounts prepaid, accrued or due and payable under the Tenant Leases shall be prorated as of the Cut-Off Time between Seller and Purchaser. Purchaser shall receive a credit for amounts prepaid under the Tenant Leases. With respect to any rents accrued and unpaid under the Tenant Leases, such rents shall be prorated on an "if, as and when collected" basis, such that amounts collected by Purchaser or Seller after the Closing Date from tenants who owe rents for periods prior to the Closing Date, shall be applied (1) first to rents due and payable for the calendar month in which the Closing occurs to be apportioned between Seller and Purchaser, (2) next to Purchaser for rents due and payable for the period after the calendar month in which the Closing occurs, (3) next to Seller for all rents due and payable for the period preceding the calendar month in which the Closing occurs, and (D) last, to Purchaser, any balance remaining. Purchaser shall receive a credit for all assignable but unforfeited security deposits held

by Seller under the Tenant Leases which are not transferred to Purchaser, and Purchaser thereafter shall be obligated to refund or apply such deposits in accordance with the terms of such Tenant Leases. Purchaser shall not receive a credit for any non-assignable but unforfeited security deposits held by Seller, which Seller shall return to the tenant under such Tenant Lease, and Purchaser shall obtain any replacement security deposit from such tenant. This Section 11.2.2 shall survive the Closing.

11.2.3. Contracts. Any amounts prepaid, accrued or due and payable under the Contracts (other than for utilities for which proration is addressed separately in Section 11.2.6) shall be prorated as of the Cut-Off Time between Seller and Purchaser. Purchaser shall receive a credit for all deposits held by Seller under the Contracts (together with any interest thereon) which are not transferred to Purchaser, and Purchaser thereafter shall be obligated to refund or apply such deposits in accordance with the terms of such Contracts. Seller shall receive a credit for all deposits made by Seller under the Contracts (together with any interest thereon to the extent any such deposit is held by the applicable counterparty in an interest bearing account) which are transferred to Purchaser or remain on deposit for the benefit of Purchaser.

11.2.4. Property Agreements. Any fees, assessments, charges and other amounts prepaid, accrued or due and payable under any declaration of covenants, conditions or restrictions or other similar agreement recorded against the Real Property shall be prorated as of the Cut-Off Time between Seller and Purchaser.

11.2.5. Licenses and Permits. All amounts prepaid, accrued or due and payable under any Licenses and Permits transferred to Purchaser shall be prorated as of the Cut-Off Time between Seller and Purchaser. Seller shall receive a credit for all deposits made by Seller under the Licenses and Permits (together with any interest thereon to the extent any such deposit is held by applicable Governmental Authority in an interest bearing account) which are transferred to Purchaser or which remain on deposit for the benefit of Purchaser.

11.2.6. Utilities. All utility services shall be prorated as of the Cut-Off Time between Seller and Purchaser. The Parties shall use commercially reasonable efforts to obtain readings for all utilities as of the Cut-Off Time. If readings cannot be obtained as of the Cut-Off Time, the cost of such utilities shall be prorated between Seller and Purchaser by estimating such cost on the basis of the most recent bill for such service; provided, however, that after the Closing, the Parties shall reprorate the amount for such utilities and pay any deficiency in the original proration to the other Party promptly upon receipt of the actual bill for the relevant billing period, which obligation shall survive the Closing. Seller shall receive a credit for all deposits transferred to Purchaser or which remain on deposit for the benefit of Purchaser with respect to such utility contracts.

11.2.7. Bookings. Purchaser shall receive a credit for all prepaid deposits for Bookings scheduled to occur on or after the Closing Date, except to the extent such deposits are transferred to Purchaser.

11.2.8. Restaurants and Bars. Seller shall close out, and shall cause the Liquor License Permittee to close out, their respective transactions in the restaurants and bars in the Hotel as of the regular closing time for such restaurants and bars during the night in which the Cut-Off Time occurs

and retain all monies collected respectively as of such closing, and Purchaser shall be entitled to any monies collected from the restaurants and bars thereafter. Provided, however, if Purchaser or its designee is unable to obtain the Liquor Licenses for the Hotel prior to Closing, monies received after Closing for the sale of alcoholic beverages shall be distributed pursuant to the Beverage Services Agreement.

11.2.9. Vending Machines. Seller shall remove all monies from all vending machines, laundry machines, pay telephones and other coin-operated equipment as of the Cut-Off Time and shall retain all monies collected therefrom as of the Cut-Off Time, and Purchaser shall be entitled to any monies collected therefrom after the Cut-Off Time.

11.2.10. Trade Payables. Except to the extent an adjustment or proration is made under another subsection of this Section 11.2, (i) Seller shall pay in full prior to the Closing all amounts payable to vendors or other suppliers of goods or services for the Business (the "Trade Payables") which are due and payable as of the Closing Date for which goods or services have been delivered to the Hotel prior to Closing, and (ii) Purchaser shall receive a credit for the amount of such Trade Payables which have accrued, but are not yet due and payable as of the Closing Date, and Purchaser shall pay all such Trade Payables accrued as of the Closing Date when such Trade Payables become due and payable; provided, however, Seller and Purchaser shall reprorate the amount of credit for any Trade Payables and pay any deficiency in the original proration to the other Party promptly upon receipt of the actual bill for such goods or services. Seller shall receive a credit for all advance payments or deposits made with respect to F&B and non-Radisson specific Retail Merchandise ordered, but not delivered to the Hotel prior to the Closing Date, and Purchaser shall pay the amounts which become due and payable for such F&B and non-Radisson specific Retail Merchandise which were ordered prior to Closing. This Section 11.2.10 shall survive the Closing.

11.2.11. Cash. Seller shall receive a credit for all cash on hand or on deposit in any house bank at the Hotel as of the Cut-Off Time which shall remain on deposit for the benefit of Purchaser.

11.2.12. Gift Certificates. Purchaser shall receive a credit for ninety percent (90%) of the face value of all gift certificates issued by the Hotel for use at the Hotel outstanding as of the Closing Date.

11.2.13. Existing Reserves. All funds in any accounts or reserves held by the Existing Manager under the Existing Management Agreement (including, without limitations, the reserve for replacements and the operating account) are the property of Seller and will be released to Seller.

11.2.14. MEP Contract. If the MEP Work has not yet been completed and/or there are sums remaining to be paid under the MEP Contract, Purchaser shall receive a credit in the amount of any outstanding amounts that remain unpaid as of the Closing, irrespective of whether the MEP Work thereunder has been completed.

11.2.15. Employees. Seller shall be responsible for all wages, salaries, benefits and other costs of employment of Employees (including employment and withholding taxes) payable or reimbursable to Existing Manager pursuant to the Existing Management Agreement relating to



the period prior to the Cut-Off Time, and Purchaser shall be responsible for all wages, salaries, benefits and other costs of employment of Employees payable or reimbursable to Manager pursuant to the Existing Management Agreement relating to the period after the Cut-Off Time if Purchaser assumes the Existing Management Agreement. With respect to hourly Employees, (a) wages for such Employees shall be allocated according to hours worked during the current pay period before and after the Cut-Off Time; (b) employment and withholding taxes for the current pay period for such Employees shall be allocated in the same manner as wages; and (c) earned vacation and required contributions to health, pension and other benefit plans for such Employees shall be allocated on the basis used by Manager under the Existing Management Agreement for allocating such costs to particular accounting periods, with such costs attributable to the accounting period in which the Closing Date occurs to be allocated on a per diem basis according to the number of days in the current period occurring before and after the Cut-Off Time. Purchaser shall receive a credit for all amounts unpaid (or not yet due and payable) under the Employment Agreements.

11.2.16 Management Fees. Any prepaid, accrued or due and payable amounts, license fees, management fees (including, without limitation, the Contract Fee (as defined in the Existing Management Agreement) and the Management Fee (as defined in the Restaurant Management Agreement)), and reimbursables under the Existing Management Agreement, Restaurant Management Agreement, Starbucks License Agreement and the Radisson Franchise Agreement shall be prorated as of the Cut-Off Time between Seller and Purchaser. Purchaser shall receive a credit for all amounts accrued as of the Cut-Off Time but not yet due and payable under each of the Existing Management Agreement, Restaurant Management Agreement, Starbucks License Agreement and the Radisson Franchise Agreement. Seller may elect to give Purchaser a credit against the Purchase Price in lieu of making the payment described in Section 10.3.1(r). The provisions of this Section 11.2.16 only apply to the extent that Purchaser assumes the applicable agreement.

11.2.17 Other Adjustments and Prorations. All other items of income and expense as are customarily adjusted or prorated upon the sale and purchase of a hotel property similar to the Property shall be adjusted and prorated between Seller and Purchaser accordingly.

### **11.3 Accounts Receivable.**

11.3.1. Guest Ledger. At Closing, Seller shall receive a credit in an amount equal to all amounts charged to the Guest Ledger for all room nights up to and including the night during which the Cut-Off Time occurs.

11.3.2. Accounts Receivable (Other than Guest Ledger). Seller shall retain the right to collect all Accounts Receivable (other than the Guest Ledger which is addressed in Section 11.3.1), and Purchaser shall not receive a credit for such Accounts Receivable. Purchaser shall cooperate with Seller in collecting the Accounts Receivable, at no cost or expense to Purchaser other than any de minimis cost and expense or any cost or expense which Seller agrees in writing to reimburse. If any such Accounts Receivable are paid to Purchaser after the Closing, Purchaser shall remit such payments to Seller, in the same form as received, on a bi-weekly basis, without any commission or deduction for Purchaser.

#### **11.4 Transaction Costs.**

11.4.1. Seller Transaction Costs. In addition to the other costs and expenses to be paid by Seller set forth elsewhere in this Agreement, Seller shall pay for the following items in connection with this transaction: (i) the costs, fees and expenses of removing or curing any Unpermitted Exceptions (including recording charges for any instruments to be recorded in connection therewith) as required under Section 5.3.4; (ii) one half (½) of the fees and expenses for the Escrow Agent; (iii) the fees and expenses of their own attorneys, accountants and consultants; and (iv) the base premium for the Title Policy.

11.4.2. Purchaser's Transaction Costs. In addition to the other costs and expenses to be paid by Purchaser as set forth elsewhere in this Agreement, Purchaser shall pay for the following items in connection with this transaction: (i) the fees and expenses incurred by Purchaser for Purchaser's Inspectors or otherwise in connection with the Inspections; (ii) the fees and expenses for updating the Survey; (iii) all of any owner's title insurance premiums above the base premium for the Title Policy, commitment fees, costs and fees and of any transfer or similar tax and recording charges payable in connection with the conveyance of the Real Property; (iv) any sales, transfer, or similar tax payable in connection with the conveyance of the Personal Property ("Personal Property Sales Taxes"); (v) any fees or expenses payable for the assignment, transfer or conveyance of any Equipment Leases, Operating Agreements, Licenses and Permits, the Intellectual Property, Plans and Specifications, and Warranties; (vi) all fees, expenses, damages, and amounts payable in connection with or as a result of the Parties executing the Temporary Starbucks Agreements, if applicable, and for the termination or assignment of the Starbucks License Agreement, whether occurring at or after Closing; (vii) any mortgage tax, title insurance fees and expenses for any loan title insurance policies (and endorsements thereto), recording charges or other amounts payable in connection with any financing obtained by Purchaser; (viii) one half (½) of the fees and expenses for the Escrow Agent; and (ix) all fees and expenses payable in connection with termination of the Radisson Franchise Agreement and Existing Management Agreement, if applicable; (x) all fees and expenses payable in connection with the termination of the Restaurant Management Agreement if terminated at Closing and (xi) the fees and expenses of its own attorneys, accountants and consultants.

11.4.3. Other Transaction Costs. All other fees, costs and expenses not expressly addressed in this Section 11.4 or elsewhere in this Agreement shall be allocated between Seller and Purchaser in accordance with applicable local custom for similar transactions.

11.4.4. Survival. This Section 11.4 shall survive the Closing.

### **ARTICLE XII TRANSITION PROCEDURES**

**12.1 Safe Deposit Boxes.** Prior to the Closing, Seller shall notify all guests or customers who are then using a safe deposit box at the Hotel advising them of the pending change in management of the Hotel and requesting them to conduct an inventory and verify the contents of such safe deposit box. All inventories by such guests or customers shall be conducted under the joint supervision of employees, agents or representatives of the Parties. Upon such inventory and verification, Seller

shall deliver to Purchaser all keys, receipts and agreements for such safe deposit box (and thereafter such safe deposit box shall be deemed an "Inventoried Safe Deposit Box"). If this Agreement is terminated after such inventory, Purchaser shall return all keys, receipts and agreements to Seller for such Inventoried Safe Deposit Boxes immediately upon such termination. Upon Closing, Seller shall deliver to Purchaser all keys in Seller's Possession for all safe deposit boxes not then in use, and a list of all safe deposit boxes which are then in use, but not yet inventoried by the depositor, with the name and room number of such depositor. After the Closing, the Parties shall make appropriate arrangements for guests and customers at the Hotel to inventory and verify the contents of the non-Inventoried Safe Deposit Boxes which are then in use, and upon such inventory and verification, Seller shall deliver to Purchaser all keys, receipt and agreements for such safe deposit box (and such safe deposit box thereafter shall constitute an Inventoried Safe Deposit Box). Notwithstanding anything herein to the contrary, Seller shall have the right, but not the obligation, to remove the locks (by drilling or by any other means necessary) of any or all non-Inventoried Safe Deposit Boxes that are inoperable or otherwise inaccessible. Seller shall have no obligation to replace or repair any such non-Inventoried Safe Deposit Boxes and Purchaser hereby agrees to accept such non-Inventoried Safe Deposit Boxes in an "as-is" condition. **PURCHASER SHALL BE RESPONSIBLE FOR, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE SELLER INDEMNITEES IN ACCORDANCE WITH ARTICLE XV FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY OF THE SELLER INDEMNITEES WITH RESPECT TO, ANY THEFT, LOSS OR DAMAGE TO THE CONTENTS OF ANY SAFE DEPOSIT BOX FROM AND AFTER THE TIME SUCH SAFE DEPOSIT BOX IS DEEMED AN INVENTORIED SAFE DEPOSIT BOX PURSUANT TO THIS SECTION 12.1. SELLER SHALL BE RESPONSIBLE FOR, AND SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE PURCHASER INDEMNITEES IN ACCORDANCE WITH ARTICLE XV FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY PURCHASER INDEMNITEES WITH RESPECT TO, ANY THEFT, LOSS OR DAMAGE TO THE CONTENTS OF ANY SAFE DEPOSIT BOX PRIOR TO THE TIME SUCH SAFE DEPOSIT BOX IS DEEMED AN INVENTORIED SAFE DEPOSIT BOX.**

**12.2 Baggage.** On the Closing Date, employees, agents or representatives of the Parties jointly shall make a written inventory of all baggage, boxes and similar items checked in or left in the care of Seller at the Hotel, and Seller shall deliver to Purchaser the keys to any secured area which such baggage and other items are stored (and thereafter such baggage, boxes and other items inventoried shall be deemed the "Inventoried Baggage"). **PURCHASER SHALL BE RESPONSIBLE FOR, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE SELLER INDEMNITEES IN ACCORDANCE WITH ARTICLE XV FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY OF THE SELLER INDEMNITEES WITH RESPECT TO ANY THEFT, LOSS OR DAMAGE TO ANY INVENTORIED BAGGAGE FROM AND AFTER THE TIME OF SUCH INVENTORY, AND ANY OTHER BAGGAGE, BOXES OR SIMILAR ITEMS LEFT IN THE CARE OF PURCHASER WHICH WAS NOT INVENTORIED BY THE PARTIES. SELLER SHALL BE RESPONSIBLE FOR, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE PURCHASER INDEMNITEES IN ACCORDANCE WITH ARTICLE XV FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY PURCHASER**

**INDEMNITEES WITH RESPECT TO ANY THEFT, LOSS OR DAMAGE TO ANY INVENTORIED BAGGAGE PRIOR TO THE TIME OF SUCH INVENTORY, AND ANY OTHER BAGGAGE, BOXES OR SIMILAR ITEMS LEFT IN THE CARE OF SELLER WHICH WAS NOT INVENTORIED BY THE PARTIES.**

**12.3 Removal of IT Systems.** With respect to the IT Systems Purchaser shall (i) be responsible for obtaining any consents or approvals necessary for the assignment or transfer of such IT Systems from Seller to Purchaser, or a new license for such IT Systems (as the case may be), and (ii) pay any fees or expenses charged by the licensor, vendor or supplier of such IT Systems in respect of such assignment or transfer or new license (as the case may be). With respect to the Excluded IT Systems to be removed from the Hotel, Seller shall have no obligation to replace such Excluded IT Systems. If Purchaser replaces any of the Excluded IT Systems removed by Seller, Seller shall cooperate with Purchaser in all reasonable respects to transfer all data from such Excluded IT Systems which were removed to the replacement systems installed by Purchaser, provided, however, that Seller makes no representation, warranty or guarantee whatsoever that the data on such Excluded IT Systems removed by Seller will be transferable or compatible with the replacement systems installed by Purchaser.

**12.4 Notice to Guests.** At Seller's option, Seller shall send an announcement to all guests and customers at the Hotel as of the Closing and all Persons who have Bookings as of the Closing informing such Persons of the change in management of the Hotel, in form and substance reasonably acceptable to Purchaser.

**ARTICLE XIII  
DEFAULT AND REMEDIES**

**13.1 Seller's Default.** If, at or any time prior to Closing, Seller fails to perform its covenants or obligations under this Agreement in any material respect (a "Seller Default"), and no Purchaser Default has occurred which remains uncured, then Purchaser, may elect as its sole and exclusive remedy to (a) terminate this Agreement, in which case the Earnest Money, less the Independent Consideration, shall be refunded to Purchaser in accordance with Section 3.2.4 and the Parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination; (b) proceed to Closing without any reduction in or setoff against the Purchase Price, in which case Purchaser shall be deemed to have waived such Seller Default; or (c) obtain a court order for specific performance, provided that, if (i) the remedy of specific performance is not available to Purchaser because Seller conveyed the Property to a third-party or a foreclosure has occurred or (ii) Seller failed to comply with the provisions of the last sentence of Section 5.3.1, Seller will be liable to Purchaser for Purchaser's direct actual damages resulting from said breach. Notwithstanding anything else to the contrary in this Agreement, as a condition precedent to an action by Purchaser for specific performance under this Section 13.1 or damages under the preceding sentence, Purchaser must give written notice to Seller and file said action within sixty (60) days after the scheduled Closing Date.

**13.2 Seller's Right to Cure.** Notwithstanding anything to the contrary in this Agreement, Purchaser shall not have the right to exercise its remedies under clauses (a) or (c) of Section 13.1 for a Seller Default or Section 9.2.2 for a failure of a Purchaser Closing Condition (a "Purchaser

Closing Condition Failure”), unless Purchaser has provided written notice to Seller specifying in reasonable detail the nature of the Seller Default or Purchaser Closing Condition Failure (as the case may be), and Seller has not cured such Seller Default or Purchaser Closing Condition Failure (as the case may be) within ten (10) days after Seller’s receipt of such notice (the “Seller Cure Period”), in which case, the Closing shall be postponed until the date which is five (5) Business Days after the expiration of the Seller Cure Period. However, if Seller fails to cure the applicable Seller Default or Purchaser Closing Condition Failure by the last day of the Seller Cure Period, Purchaser may exercise its remedies under clauses (a) or (c) of Section 13.1 on the next Business Day following the last day of the Seller Cure Period.

**13.3 Purchaser’s Default.** If (i) Purchaser has not deposited the Deposit within the time period provided in, and otherwise in accordance with, Section 3.2.1, or (ii) at Closing, Purchaser fails to perform any of its other covenants or obligations under this Agreement in any material respect which breach or default is not caused by a Seller Default (a “Purchaser Default”), then Seller, as its sole and exclusive remedy, may elect to (A) terminate this Agreement by providing written notice to Purchaser, in which case the Earnest Money shall be disbursed to Seller in accordance with Section 3.2.3, and the Parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination, or (B) proceed to Closing pursuant to this Agreement, in which case Seller shall be deemed to have waived such Purchaser Default. Notwithstanding the foregoing, Seller shall have the right to bring an action for damages against Purchaser for Purchaser’s breach of its covenants or obligations under Section 16.2. The preceding sentence shall survive the termination of this Agreement.

**13.4 Purchaser’s Right to Cure.** Notwithstanding anything to the contrary in this Agreement, Seller shall not have the right to exercise its remedies under Section 13.3(A) for a Purchaser Default (except for Purchaser’s failure to timely deposit the Deposit) or Section 9.3.2 for a Seller Closing Condition Failure, unless Seller has provided written notice to Purchaser specifying in reasonable detail the nature of the Purchaser Default or Seller Closing Condition Failure (as the case may be), and Purchaser has not cured such Purchaser Default or Seller Closing Condition Failure (as the case may be) within five (5) Business Days after Purchaser’s receipt of such notice (the “Purchaser Cure Period”), in which case the Closing shall be postponed until the date which is one (1) Business Day after the expiration of the Purchaser Cure Period.

**13.5 LIQUIDATED DAMAGES; LIMITATION ON DAMAGES.** THE PARTIES ACKNOWLEDGE AND AGREE THAT IF THIS AGREEMENT IS TERMINATED PURSUANT TO SECTION 13.3, THE DAMAGES THAT SELLER WOULD SUSTAIN AS A RESULT OF SUCH TERMINATION WOULD BE DIFFICULT IF NOT IMPOSSIBLE TO ASCERTAIN. ACCORDINGLY, THE PARTIES AGREE THAT SELLER SHALL RETAIN THE EARNEST MONEY AS FULL AND COMPLETE LIQUIDATED DAMAGES (AND NOT AS A PENALTY) AS SELLER’S SOLE AND EXCLUSIVE REMEDY FOR SUCH TERMINATION; PROVIDED, HOWEVER, THAT IN ADDITION TO THE EARNEST MONEY, SELLER SHALL RETAIN ALL RIGHTS AND REMEDIES UNDER THIS AGREEMENT WITH RESPECT TO THOSE OBLIGATIONS OF PURCHASER WHICH EXPRESSLY SURVIVE SUCH TERMINATION. IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE FOR ANY CONSEQUENTIAL,

PUNITIVE, EXEMPLARY, SPECIAL, TREBLE OR OTHER FORMS OF MULTIPLE OR OTHER NON-ACTUAL DAMAGES.

#### ARTICLE XIV RISK OF LOSS

**14.1 Casualty.** If, at any time after the Effective Date and prior to Closing or earlier termination of this Agreement, the Property or any portion thereof is damaged or destroyed by fire or any other casualty (a “Casualty”), Seller shall give written notice of such Casualty to Purchaser promptly after the occurrence of such Casualty.

14.1.1. Material Casualty. If the amount of the repair or restoration caused by a Casualty required by such Casualty equals or exceeds five percent (5%) of the Purchase Price (a “Material Casualty”) and such Material Casualty was not caused by Purchaser or Purchaser’s Inspectors, or their respective employees or agents, then Purchaser shall have the right to elect, by providing written notice to Seller within ten (10) days after Purchaser’s receipt of Seller’s written notice of such Material Casualty, to (a) terminate this Agreement and in which case the Earnest Money, less the Independent Consideration, shall be refunded to Purchaser in accordance with Section 3.2.4, and the Parties shall have no further rights or obligations under this Agreement, except those which expressly survive such termination; or (b) proceed to Closing, without terminating this Agreement, in which case Seller shall (i) provide Purchaser with a credit against the Purchase Price in an amount equal to the lesser of: (A) the applicable insurance deductible, or (B) the reasonable estimated costs for the repair or restoration required by such Material Casualty, and (ii) transfer and assign to Purchaser all of Seller’s right, title and interest in and to all proceeds from all casualty and lost profits insurance policies maintained by Seller with respect to the Hotel, except those proceeds allocable to lost profits and costs incurred by Seller for the period prior to the Closing. If Purchaser fails to provide written notice of its election to Seller within such time period, then Purchaser shall be deemed to have elected to terminate this Agreement pursuant to clause (a) of this preceding sentence. If the Closing is scheduled to occur within Purchaser’s ten (10) day election period, the Closing Date shall be postponed until the date which is five (5) Business Days after the expiration of such ten (10) day election period.

14.1.2. Non-Material Casualty. In the event of any (i) Casualty which is not a Material Casualty, or (ii) Material Casualty which is caused by Purchaser or Purchaser’s Inspectors, or their respective employees or agents, then Purchaser shall not have the right to terminate this Agreement, but shall proceed to Closing, in which case Seller shall (A) provide Purchaser with a credit against the Purchase Price (except if such Casualty is caused by Purchaser or Purchaser’s Inspectors) in an amount equal to the lesser of: (1) the applicable insurance deductible, and (2) the reasonable estimated costs for the repair or restoration required by such Casualty, and (B) transfer and assign to Purchaser all of Seller’s right, title and interest in and to all proceeds from all casualty and lost profits insurance policies maintained by Seller with respect to the Hotel, except those proceeds allocable to any lost profits or costs incurred by Seller for the period prior to the Closing.

**14.2 Condemnation.** If, at any time after the Effective Date and prior to Closing any Governmental Authority commences any condemnation proceeding or other proceeding in eminent domain with respect to all or any portion of the Real Property (a “Condemnation”), Seller shall give

written notice of such Condemnation to Purchaser promptly after Seller receives notice of such Condemnation.

14.2.1. Material Condemnation. If the Condemnation would (i) result in the permanent loss of (A) any guest rooms or (B) pedestrian or vehicular access to the Hotel from the existing street currently providing such access, or (ii) cause the Hotel to materially violate any Applicable Law including, without limitation, ingress/egress to or from the Hotel, zoning or parking laws and requirements (a “Material Condemnation”), then Purchaser shall have the right to elect, by providing written notice to Seller within ten (10) days after Purchaser’s receipt of Seller’s written notice of such Material Condemnation, to (A) terminate this Agreement, in which case the Earnest Money, less the Independent Consideration, shall be refunded to Purchaser in accordance with Section 3.2.4, and the Parties shall have no further rights or obligations under this Agreement except those which expressly survive such termination; or (B) proceed to Closing, without terminating this Agreement, in which case Seller shall assign to Purchaser all of Seller’s right, title and interest in all proceeds and awards from such Material Condemnation and/or deliver any theretofore received. If Purchaser fails to provide written notice of its election to Seller within such time period, then Purchaser shall be deemed to have elected to terminate this Agreement pursuant to clause (A) of the preceding sentence. If the Closing is scheduled to occur within Purchaser’s ten (10) day election period, the Closing shall be postponed until the date which is five (5) Business Days after the expiration of such ten (10) day election period.

14.2.2. Non-Material Condemnation. In the event of any Condemnation other than a Material Condemnation, Purchaser shall not have the right to terminate this Agreement, but shall proceed to Closing, in which case Seller shall assign to Purchaser all of Seller’s right, title and interest in all proceeds and awards from such Condemnation.

## **ARTICLE XV SURVIVAL, INDEMNIFICATION AND RELEASE**

**15.1 Survival.** Except as expressly set forth in this Section 15.1, all representations, warranties, covenants, liabilities and obligations shall be deemed (i) if the Closing occurs, to merge in the Deed and not survive the Closing, or (ii) if this Agreement is terminated, not to survive such termination.

15.1.1. Survival of Representations and Warranties. If the Closing occurs, the representations and warranties of Seller in Section 7.1 and Purchaser in Section 7.2 shall survive the Closing for a period commencing on the Closing Date and expiring at 5:00 p.m. (Central Standard Time) on the date which is one hundred eighty (180) days after the Closing Date (the period any representation or warranty survives termination or the Closing as set forth in this Section 15.1.1) is referred to herein as the “Survival Period”).

15.1.2. Survival of Covenants and Obligations. If this Agreement is terminated, only those covenants and obligations to be performed by the Parties under this Agreement which expressly survive the termination of this Agreement shall survive such termination. If the Closing occurs, only those covenants and obligations to be performed by the Parties under this Agreement which expressly survive the Closing shall survive the Closing.

15.1.3. Survival of Indemnification. This Article XV and all other rights and obligations of defense and indemnification as expressly set forth in this Agreement shall survive the Closing or termination of this Agreement.

**15.2 Indemnification by Seller.** SUBJECT TO THE LIMITATIONS SET FORTH IN ARTICLE V, SECTIONS 15.1, 15.4, 15.5, 15.6 AND 15.7, SELLER SHALL INDEMNIFY AND HOLD HARMLESS THE PURCHASER INDEMNITEES FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY PURCHASER INDEMNITEE TO THE EXTENT RESULTING FROM (I) THE BREACH OF ANY EXPRESS REPRESENTATIONS OR WARRANTIES OF SELLER IN THIS AGREEMENT WHICH EXPRESSLY SURVIVES THE CLOSING OR TERMINATION OF THIS AGREEMENT (AS THE CASE MAY BE), (II) THE BREACH BY SELLER OF ANY OF THEIR COVENANTS OR OBLIGATIONS UNDER THIS AGREEMENT WHICH EXPRESSLY SURVIVES THE CLOSING OR TERMINATION OF THIS AGREEMENT (AS THE CASE MAY BE), AND (III) ANY RETAINED LIABILITIES, OTHER THAN ANY LIABILITIES FOR WHICH PURCHASER HAS EXPRESSLY RELEASED SELLER PURSUANT TO THE TERMS OF THIS AGREEMENT.

**15.3 Indemnification by Purchaser.** SUBJECT TO THE LIMITATIONS SET FORTH IN SECTIONS 15.1, 15.4, 15.5 AND 15.6, PURCHASER SHALL INDEMNIFY AND HOLD HARMLESS THE SELLER INDEMNITEES FROM AND AGAINST ANY INDEMNIFICATION LOSS INCURRED BY ANY SELLER INDEMNITEE TO THE EXTENT RESULTING FROM (I) ANY BREACH OF ANY EXPRESS REPRESENTATIONS OR WARRANTIES OF PURCHASER IN THIS AGREEMENT WHICH EXPRESSLY SURVIVES THE CLOSING OR TERMINATION OF THIS AGREEMENT (AS THE CASE MAY BE), (II) ANY BREACH BY PURCHASER OF ANY OF ITS COVENANTS OR OBLIGATIONS UNDER THIS AGREEMENT WHICH EXPRESSLY SURVIVES THE CLOSING OR TERMINATION OF THIS AGREEMENT (AS THE CASE MAY BE), AND (III) ANY ASSUMED LIABILITIES; PROVIDED, HOWEVER, THAT WITHOUT LIMITING THE RELEASE SET FORTH IN SECTION 15.7, PURCHASER SHALL NOT INDEMNIFY AND/OR HOLD HARMLESS ANY SELLER INDEMNITEE AGAINST ANY CLAIM OR ACTION BROUGHT AGAINST SUCH SELLER INDEMNITEE RELATING TO ENVIRONMENTAL LIABILITIES.

**15.4 Limitations on Indemnification Obligations.**

15.4.1. Failure to Provide Notice within Survival Period. Notwithstanding anything else to the contrary in this Agreement, as a condition precedent to seeking defense or indemnification for a breach of any representations or warranties shall be entitled to indemnification for such breach only if the Indemnitee has given written notice to the Indemnitor in accordance with Section 15.5.1 prior to the expiration of fifteen (15) days beyond the applicable Survival Period.

15.4.2. Cap on Seller Liability. Except with respect to the Joinder executed and delivered by Forestar Group, Inc. (“Guarantor”), Purchaser agrees that its recourse against any Seller Indemnitee under this Agreement or under any other agreement, document, certificate or instrument delivered by Seller to Purchaser, or under any law applicable to the Property or this transaction,



shall be strictly limited to Seller's interest in the Property or the net proceeds from the sale of the Property, and that in no event shall Purchaser seek or obtain any recovery or judgment against any of Seller Indemnitees' other assets (if any), other than Guarantor. The aggregate liability of all Seller Indemnitees arising directly or indirectly pursuant to or in connection with the representations, warranties, indemnifications, covenants or other obligations (whether express or implied) of Seller under this Agreement or any document or certificate executed in connection with this Agreement shall be limited to \$4,500,000 in the aggregate, regardless of whether any such liability arises from the actual or alleged negligent, willful or intentional act or omission of Seller Indemnitees. In no event shall Purchaser have the right to bring a cause of action for any claims until the amount of all claims exceeds \$300,000 in the aggregate. Seller has given Purchaser material concessions regarding this transaction in exchange for Purchaser agreeing to the provisions of this Section. The provisions of this Section 15.4.2 shall supersede anything to the contrary contained in this Agreement, any document or certificate executed in connection with this Agreement, or under any law applicable to the Property or this transaction. This Section shall survive any termination of this Agreement and is not subject to the one hundred eighty (180) day limitation in Section 15.1.1.

15.4.3. Failure to Provide Timely Notice of Indemnification Claim. Notwithstanding anything to the contrary in this Agreement, an Indemnatee shall not be entitled to defense or indemnification to the extent the Indemnatee's failure to promptly notify the Indemnitor in accordance with Section 15.5.1, (i) prejudices the Indemnitor's ability to defend against any Third-Party Claim on which such Indemnification Claim is based, or (ii) increases the amount of Indemnification Loss incurred in respect of such indemnification obligation of the Indemnitor.

15.4.4. Effect of Taxes, Insurance or Other Reimbursement. Notwithstanding anything to the contrary in this Agreement, the amount of any Indemnification Loss for which indemnification is provided to an Indemnatee under this Article XV shall be net of any tax benefits realized or insurance proceeds received by such Indemnatee in connection with the Indemnification Claim, or any other third-party reimbursement. The Indemnatee shall use commercially reasonable efforts to realize any tax benefit, collect any insurance proceeds or obtain any third-party reimbursement with respect to such Indemnification Claim, though such Indemnatee shall not be precluded from seeking an Indemnification Claim prior to realization of such tax benefit, insurance proceeds or third-party reimbursement, and if such tax benefits, insurance proceeds or reimbursement are realized or obtained by the Indemnatee after the Indemnitor has paid any amount in respect of an Indemnification Loss to the Indemnatee, the Indemnatee shall reimburse the amount realized or collected by the Indemnatee up to the amount received from the Indemnitor for such Indemnification Loss.

## **15.5 Indemnification Procedure.**

15.5.1. Notice of Indemnification Claim. If any of the Seller Indemnitees or Purchaser Indemnitees (as the case may be) (each, an "Indemnatee") is entitled to defense or indemnification under Sections 4.1.5, 8.4, 12.1, 12.2, 15.2 or 15.3 or any other express provision in this Agreement (each, an "Indemnification Claim"), the Party required to provide defense or indemnification to such Indemnatee (the "Indemnitor") shall not be obligated to defend, indemnify or hold harmless such Indemnatee unless and until such Indemnatee provides written notice to such Indemnitor

promptly after such Indemnitee has actual knowledge of any facts or circumstances on which such Indemnification Claim is based or a Third-Party Claim is made on which such Indemnification Claim is based, describing in reasonable detail such facts and circumstances or Third-Party Claim with respect to such Indemnification Claim.

15.5.2. Resolution of Indemnification Claim Not Involving Third-Party Claim. If the Indemnification Claim does not involve a Third-Party Claim and is disputed by the Indemnitor, the dispute shall be resolved by litigation or other means of alternative dispute resolution as the Parties may agree in writing.

15.5.3. Resolution of Indemnification Claim Involving Third-Party Claim. If the Indemnification Claim involves a Third-Party Claim, the Indemnitor shall have the right (but not the obligation) to assume the defense of such Third-Party Claim, at its cost and expense, and shall use good faith efforts consistent with prudent business judgment to defend such Third-Party Claim, provided that (i) the counsel for the Indemnitor who shall conduct the defense of the Third-Party Claim shall be reasonably satisfactory to the Indemnitee (unless selected by Indemnitor's insurance company), (ii) the Indemnitee, at its cost and expense, may participate in, but shall not control, the defense of such Third-Party Claim, and (iii) the Indemnitor shall not enter into any settlement or other agreement which requires any performance by the Indemnitee, other than the payment of money which shall be paid by the Indemnitor. The Indemnitee shall not enter into any settlement agreement with respect to the Indemnification Claim, without the Indemnitor's prior written consent, which consent may be withheld in the Indemnitor's sole discretion. If the Indemnitor elects not to assume the defense of such Third-Party Claim, or if in the good faith judgment of the Indemnitee the Indemnitor or counsel for the Indemnitor shall have a conflict of interest which would adversely affect the Indemnitor's or its counsel's ability to defend such Third-Party Claim on behalf of the Indemnitee, the Indemnitee shall have the right to retain the defense of such Third-Party Claim at the cost and expense of the Indemnitor, and shall use good faith efforts consistent with prudent business judgment to defend such Third-Party Claim in an effective and cost-efficient manner.

15.5.4. Accrual of Indemnification Obligation. Notwithstanding anything to the contrary in this Agreement, the Indemnitee shall have no right to indemnification against the Indemnitor for any Indemnification Claim which (i) does not involve a Third-Party Claim but is disputed by Indemnitor until such time as such dispute is resolved by written agreement or other means as the Parties otherwise may agree in writing, or (ii) which involves a Third-Party Claim until such time as such Third-Party Claim is concluded, including any appeals with respect thereto. PURCHASER HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS, REMEDIES AND BENEFITS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT (SECTIONS 17.41 AND FOLLOWING OF THE TEXAS BUSINESS AND COMMERCE CODE) (THE "DTPA") AND ANY OTHER SIMILAR CONSUMER PROTECTION LAW, WHETHER FEDERAL, STATE OR LOCAL. PURCHASER COVENANTS NOT TO SUE SELLER UNDER THE DTPA OR ANY SUCH SIMILAR CONSUMER PROTECTION LAW. THE PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING OR ANY TERMINATION OF THIS AGREEMENT.

**15.6 Exclusive Remedy for Indemnification Loss.** Except for claims based on fraud, the indemnification provisions in this Article XV shall be the sole and exclusive remedy of any Indemnatee with respect to any claim for Indemnification Loss arising from or in connection with this Agreement.

**15.7 RELEASE OF SELLER FOR VIOLATIONS OF APPLICABLE LAW.** NOTWITHSTANDING ANY INDEMNIFICATION OBLIGATION OF SELLER UNDER THIS AGREEMENT, PURCHASER (FOR ITSELF AND ALL PURCHASER INDEMNITEES) DOES HEREBY FOREVER RELEASE AND DISCHARGE THE SELLER INDEMNITEES FROM ANY AND ALL VIOLATIONS OF APPLICABLE LAW INCLUDING, WITHOUT LIMITATION VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990 AND ALL ENVIRONMENTAL CLAIMS AND ENVIRONMENTAL LIABILITIES, WHETHER NOW KNOWN OR UNKNOWN TO PURCHASER; PROVIDED, HOWEVER, THAT SUCH RELEASE AND DISCHARGE SHALL NOT APPLY TO ANY INDEMNIFICATION OBLIGATION OF SELLER TO THE EXTENT RESULTING FROM A BREACH OF SELLER'S REPRESENTATIONS OR WARRANTIES SET FORTH IN SECTION 7.1. NOTHING CONTAINED IN THIS RELEASE, HOWEVER, IS INTENDED TO OR SHALL BE DEEMED TO RELEASE ANY CLAIMS WHICH PURCHASER MAY HAVE AGAINST ANY OTHER POTENTIALLY LIABLE PARTY WITH RESPECT TO ANY SUCH VIOLATIONS OF APPLICABLE LAW.

\_\_\_\_Purchaser's Initials    \_\_\_\_Seller's Initials

## ARTICLE XVI MISCELLANEOUS PROVISIONS

### 16.1 Notices.

16.1.1. Method of Delivery. All notices, requests, demands and other communications required to be provided by any Party under this Agreement (each, a "Notice") shall be in writing and delivered, at the sending Party's cost and expense, by (i) personal delivery, (ii) certified U.S. mail, with postage prepaid and return receipt requested, (iii) overnight courier service, or (iv) electronic mail transmission to the recipient Party at the address or e-mail address below, provided that notices given via electronic mail shall only be effective if and when the notice is also delivered via one of the other methods permitted in clauses (i), (ii) or (iii).

If to Seller:

c/o Forestar (USA) Real Estate Group Inc.  
6300 Bee Cave Road, Bldg. Two, Suite 500  
Austin, Texas 78746  
Attn: Tom Etheredge  
Email: tometheredge@forestargroup.com

with a copy to:

c/o Forestar (USA) Real Estate Group Inc.  
6300 Bee Cave Road, Building Two, Suite 500  
Austin, Texas 78746  
Attn: Matt Stark  
Email: mattstark@forestargroup.com

with a copy to:

Husch Blackwell LLP  
2001 Ross Avenue, Suite 2000  
Dallas, Texas 75201  
Attn: R. Tyler Johnson  
Email: tyler.johnson@huschblackwell.com

If to Purchaser:

c/o Square Mile Capital Management LLC  
350 Park Avenue  
New York, New York 10022  
Attn: Joseph D. D'Angelo and Jesse Goepel  
Email: jdangelo@squaremilecapital.com and jgoepel@squaremilecapital.com

with a copy to:

c/o The Yucaipa Companies  
9130 West Sunset Blvd.  
Los Angeles, CA 90069  
Attn: Robert P. Bermingham  
Email: legal@yucaipaco.com

with a copy to:

c/o Sydel Group  
30 West 26<sup>th</sup> Street, 12<sup>th</sup> Floor  
New York, New York 10010  
Attn: Joshua Babbitt  
Email: jbabbitt@sydelgroup.com

with a copy to:

Greenberg Traurig, LLP  
The MetLife Building  
200 Park Avenue  
New York, New York 10166  
Attn: Gary S. Kleinman, Esq.  
Email: kleinmang@gtlaw.com

16.1.2. **Receipt of Notices.** All Notices sent by a Party (or its counsel pursuant to Section 16.1.4) under this Agreement shall be deemed to have been received by the Party to whom such Notice is sent upon (i) delivery to the address of the recipient Party, provided that such delivery is made prior to 5:00 p.m. (Austin, Texas time) on a Business Day, otherwise the following Business Day, or (ii) the attempted delivery of such Notice if (A) such recipient Party refuses delivery of such Notice, or (B) such recipient Party is no longer at such address or e-mail address, and such recipient Party failed to provide the sending Party with its current address or e-mail address pursuant to Section 16.1.3.

16.1.3. **Change of Address.** The Parties and their respective counsel shall have the right to change their respective address and/or facsimile number for the purposes of this Section 16.1 by providing a Notice of such change in address and/or facsimile number as required under this Section 16.1.

16.1.4. **Delivery by Party's Counsel.** The Parties agree that the attorney for such Party shall have the authority to deliver Notices on such Party's behalf to the other Party hereto.

**16.2 No Recordation.** Except in connection with an action for specific performance, Purchaser shall not record this Agreement, nor any memorandum or other notice of this Agreement, in any public records. This provision shall survive any termination of this Agreement.

**16.3 Time is of the Essence.** Time is of the essence of this Agreement; provided, however, that notwithstanding anything to the contrary in this Agreement, if the time period for the performance of any covenant or obligation, satisfaction of any condition or delivery of any Notice or item required under this Agreement shall expire on a day other than a Business Day, such time period shall be extended automatically to the next Business Day.

**16.4 Assignment.** Neither Party may assign this Agreement or any interest therein to any Person, without the prior written consent of the other Party, which consent may be withheld in such Party's sole discretion.

**16.5 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and permitted assigns.

**16.6 Third Party Beneficiaries.** This Agreement shall not confer any rights or remedies on any Person other than (i) the Parties and their respective successors and permitted assigns, and (ii) any Indemnitee to the extent such Indemnitee is expressly provided any right of defense or indemnification in this Agreement.

**16.7 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ANY PRINCIPLES REGARDING CONFLICT OF LAWS.**

**16.8 Rules of Construction.** The following rules shall apply to the construction and interpretation of this Agreement:

16.8.1. Singular words shall connote the plural as well as the singular, and plural words shall connote the singular as well as the plural, and the masculine shall include the feminine and the neuter, as the context may require.

16.8.2. All references in this Agreement to particular articles, sections, subsections or clauses (whether in upper or lower case) are references to articles, sections, subsections or clauses of this Agreement. All references in this Agreement to particular exhibits or schedules (whether in upper or lower case) are references to the exhibits and schedules attached to this Agreement, unless otherwise expressly stated or clearly apparent from the context of such reference.

16.8.3. The headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

16.8.4. Each Party and its counsel have reviewed and revised (or requested revisions of) this Agreement and have participated in the preparation of this Agreement, and therefore any rules of construction requiring that ambiguities are to be resolved against the Party which drafted the Agreement or any exhibits hereto shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto.

16.8.5. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and not solely to the provision in which such term is used.

16.8.6. The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without limitation.”

16.8.7. The term “sole discretion” with respect to any determination to be made a Party under this Agreement shall mean the sole and absolute discretion of such Party, without regard to any standard of reasonableness or other standard by which the determination of such Party might be challenged.

**16.9 Severability.** If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected term or provision at any other time or in any other jurisdiction.

**16.10 JURISDICTION AND VENUE.** ANY LITIGATION OR OTHER COURT PROCEEDING WITH RESPECT TO ANY MATTER ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL BE CONDUCTED IN THE COUNTY OF TRAVIS, STATE OF TEXAS AND/OR FEDERAL COURTS IN TRAVIS COUNTY, AS APPLICABLE, HAVING JURISDICTION AT THE SITE OF THE PROPERTY, AND SELLER (FOR ITSELF AND ALL OF THE SELLER INDEMNITEES) AND PURCHASER (FOR ITSELF AND ALL PURCHASER INDEMNITEES) HEREBY SUBMIT TO JURISDICTION AND CONSENT TO VENUE IN SUCH COURTS, AND WAIVE ANY DEFENSE BASED ON FORUM NON CONVENIENS.

**16.11 WAIVER OF TRIAL BY JURY.** EACH PARTY HEREBY WAIVE ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION OR OTHER COURT PROCEEDING WITH RESPECT TO ANY MATTER ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

**16.12 Prevailing Party.** If any litigation or other court action, arbitration or similar adjudicatory proceeding is commenced by any Party to enforce its rights under this Agreement against any other Party, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, incurred by the prevailing Party in such litigation, action, arbitration or proceeding shall be reimbursed by the losing Party; provided, that if a Party to such litigation, action, arbitration or proceeding prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by such Party on an equitable basis.

**16.13 Incorporation of Recitals, Exhibits and Schedules.** The recitals to this Agreement, and all exhibits and schedules (as amended, modified and supplemented from time to time pursuant to Section 16.14) referred to in this Agreement are incorporated herein by such reference and made a part of this Agreement. Any matter disclosed in any schedule to this Agreement shall be deemed to be incorporated in all other schedules to this Agreement.

**16.14 Updates of Schedules.** Notwithstanding anything to the contrary in this Agreement, Seller shall have the right to amend and supplement any schedule to this Agreement without Purchaser's consent from time to time to the extent that such schedule needs to be amended or supplemented to maintain the truth or accuracy of the applicable representation or warranty or the information disclosed therein by providing a written copy of such amendment or supplement to Purchaser, provided that such update or supplement is due to the occurrence of events or changes in circumstances that are permitted to occur hereunder. If Seller makes any amendment or supplement to the schedules after the Effective Date (a "Post-Execution Disclosure"), then (A) such Post-Execution Disclosure shall constitute a Purchaser Closing Condition Failure if, and only if, the corresponding representation or warranty or other information would be untrue or incorrect in any material respect in the absence of such Post-Execution Disclosure which is amended or supplemented by such Post-Execution Disclosure and would result in a material adverse effect to Purchaser's ownership of the Property or the conduct of the Business upon Closing (meaning it would result in Purchaser incurring additional expenses or liabilities in the amount of \$2,000,000.00 or more), provided that any Post-Execution Disclosure that has an effect of less than \$2,000,000 shall result in a pro tanto reduction of the Purchase Price as set forth in Section 9.2.3 and (B) if Purchaser proceeds to Closing notwithstanding such Post-Execution Disclosure, the corresponding representation, warranty or other information shall be deemed qualified by such Post-Execution Disclosure for the purposes of limiting the defense and indemnification obligations of Seller under this Agreement. For purposes of Section 9.2.1, Section 9.2.3, and this Section 16.14 nothing will be considered an amendment or supplement to any schedule to this Agreement unless it is in writing signed by Seller and is specifically identified as an "official amendment or supplement" to the Agreement.

**16.15 Entire Agreement.** This Agreement sets forth the entire understanding and agreement of the Parties hereto, and shall supersede any other agreements and understandings (written or oral)

between the Parties on or prior to the Effective Date with respect to the transaction described in this Agreement.

**16.16 Amendments, Waivers and Termination of Agreement.** Except as set forth in Section 16.14, no amendment or modification to any terms or provisions of this Agreement, waiver of any covenant, obligation, breach or default under this Agreement or termination of this Agreement (other than as expressly provided in this Agreement), shall be valid unless in writing and executed and delivered by each of the Parties.

**16.17 Contract as an Offer.** Seller shall have no obligation to sell the Property to Purchaser, unless and until all Parties have executed and delivered this Agreement to the Escrow Agent and all other Parties.

**16.18 Execution of Agreement.** A Party may deliver executed signature pages to this Agreement or by e-mail transmission to any other Party, which e-mail copy shall be deemed to be an original executed signature page. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page.

**16.19 Intentionally Omitted.**

**16.20 Notice of Water Level Fluctuations.** Seller hereby notifies Purchaser pursuant to Section 5.019 of the Texas Property Code that the water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of:

- (a) an entity lawfully exercising its right to use the water stored in the impoundment; or
- (b) drought or flood conditions.

[Remainder of page intentionally left blank;  
Signatures on following pages]



**IN WITNESS WHEREOF**, each Party has caused this Agreement to be executed and delivered in its name by a duly authorized officer or representative.

**SELLER:**

**Capitol of Texas Insurance Group Inc.,**  
a Delaware corporation

By: /s/ David M. Grimm

Name: David M. Grimm

Title: Executive Vice President

[ SIGNATURES CONTINUE ON THE FOLLOWING PAGE ]

Signature Page to Purchase and Sale Agreement

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**PURCHASER:**

**Austin Lakeside Hotel Owner LLC,**  
a Delaware limited liability company

By: /s/ Joseph D. D'Angelo

Name: Joseph d. D'Angelo

Title: Authorized Signatory

Signature Page to Purchase and Sale Agreement

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### **Joinder of Guarantor**

To further induce Purchaser to enter into this Agreement, Forestar Group, Inc., a Delaware corporation (“Guarantor”), has executed this Joinder of Guarantor (“Joinder”) solely to evidence its guarantee of, and Guarantor hereby unconditionally and irrevocably guarantees to Purchaser, the payment of all claims, losses, damages, liabilities, costs and expenses of Purchaser, including reasonable attorneys’ fees and disbursements, arising out of or in connection with the breach of Seller’s representations and warranties that survive Closing pursuant to Section 15.1.1 of the Agreement. Guarantor acknowledges that it will receive substantial economic and other benefits from the execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement. Seller and Guarantor shall be jointly and severally liable to Purchaser under this Joinder. Guarantor shall have no other obligations Agreement or under any other document executed in connection with the transactions contemplated by this Agreement. The obligations of Guarantor constitutes a guaranty of payment and not of collection. Guarantor hereby waives any and all (i) defenses, offsets, counterclaims, demands, protests, presentments and notices of every kind and nature (subject to the provisions of the penultimate sentence of this Joinder), (ii) legal requirements that Purchaser institute any action or proceeding at law or in equity against Seller or any other person or entity, and (ii) rights to which he may be entitled by virtue of any suretyship law. The obligations, covenants, agreements and duties of Guarantor under this Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following, without the necessity of any notice to, or further consent of, Guarantor: the voluntary or involuntary liquidation, dissolution, insolvency, bankruptcy, reorganization, or other similar proceedings affecting Seller. Notwithstanding any provisions of the Agreement to the contrary, in connection with any action by Purchaser against Guarantor, Guarantor shall have all of Seller’s defenses, offsets, counterclaims, rights, and claims against Purchaser contained in the Agreement or otherwise available at law or in equity. The provisions of this Joinder shall survive Closing for one hundred eighty (180) days at which time this Joinder will automatically terminate unless a claim for a breach of this Joinder has been timely instituted (in which event this Joinder shall survive until the resolution of the claim).

[Signature page follows]

Signature Page to Purchase and Sale Agreement

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**GUARANTOR:**

**Forestar Group, Inc.**  
a Delaware corporation

By: /s/ Phillip J. Weber  
Name: Phillip J. Weber  
Title: Chief Executive Officer

Signature Page to Purchase and Sale Agreement

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**Joinder of Liquor License Permittee**

Liquor License Permittee joins for the sole purpose of (and is not otherwise bound by the terms hereof) confirming its agreement to cooperate with Purchaser in accordance with the provisions of Section 8.3.1 and, in that if Purchaser or its designee is unable to obtain the Liquor Licenses for the Hotel prior to Closing, Liquor License Permittee will execute the Beverage Services Agreement as of the Closing Date.

CCA HOSPITALITY, INC.,  
a Texas corporation

By: /s/ David M. Grimm  
Name: David M. Grimm  
Title: Executive Vice President

Signature Page to Purchase and Sale Agreement

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## LIST OF EXHIBITS

- Exhibit A Form of Earnest Money Escrow Agreement
- Exhibit B Form of Owner Affidavit
- Exhibit C Form of Deed
- Exhibit D Form of Bill of Sale
- Exhibit E Form of Assignment and Assumption of Leases, Contracts, Licenses and Permits
- Exhibit F Form of Beverage Services Agreement

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)**

I, Phillip J. Weber, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Forestar Group Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Phillip J. Weber

Phillip J. Weber  
Chief Executive Officer

Date: May 10, 2016

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)**

I, Charles D. Jehl, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Forestar Group Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Charles D. Jehl

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Charles D. Jehl  
Chief Financial Officer

Date: May 10, 2016



**Certification of Chief Executive Officer  
Pursuant to 18 U.S.C. Section 1350, as Adopted  
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

I, Phillip J. Weber, Chief Executive Officer of Forestar Group Inc., hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, this quarterly report on Form 10-Q fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in this quarterly report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Forestar Group Inc.

/s/ Phillip J. Weber

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Phillip J. Weber

Date: May 10, 2016

**Certification of Chief Financial Officer**  
**Pursuant to 18 U.S.C. Section 1350, as Adopted**  
**Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

I, Charles D. Jehl, Chief Financial Officer of Forestar Group Inc., hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, this quarterly report on Form 10-Q fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in this quarterly report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Forestar Group Inc.

/s/ Charles D. Jehl

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Charles D. Jehl

Date: May 10, 2016

