

DATED JANUARY 6, 2003

EUSTON ROAD HOTEL LIMITED

- and -

ACCOR UK BUSINESS AND LEISURE HOTELS LIMITED

- and -

ACCOR SA

LEASE

of

The Shaw Park Plaza Hotel
100-110 Euston Road
London
NW1 2AJ

Term: 25 years (with options to renew)
Commencing: The date hereof
Rent: £3,150,000 p.a. (subject to increase)



**JULIAN HOLY
EMPEROR'S GATE
114A CROMWELL ROAD
LONDON SW7 4ES
DX 44106 GLOUCESTER ROAD
Tel: 020 7370 5443
Fax: 020 7244 7371**

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PARTICULARS

- Date January 6 ,2003
1. the Landlord **EUSTON ROAD HOTEL LIMITED** (company number 62798 Jersey) whose registered office is at Lord Coutanche House 66-68 Esplanade St. Helier Jersey JE2 3QB
 2. the Tenant **ACCOR UK BUSINESS AND LEISURE HOTELS LIMITED** (company number 1016187) whose registered office is at 1 Shortlands Hammersmith London W6 8DR
 3. the Surety **ACCOR SA** (company number B602036444) whose registered office is at EVRY (91000) 2 Rue de la Mare Neuve France
 4. the Premises The Shaw Park Plaza Hotel 100-110 Euston Road London NW1 2AJ more particularly described in Schedule 1
 5. Contractual Term **25 YEARS** from and including the Term Commencement Date
 6. Term Commencement Date The date hereof
 7. Rents The various rents reserved by Clause 2
 8. Rent Start Date The Term Commencement Date
 9. Permitted Use As an hotel with ancillary uses to include:-
 - (i) retail outlets not exceeding 5 in number and not accommodating more than 2,000 square feet of net usable area in the aggregate;
 - (ii) the use of the existing theatre for all purposes ordinarily associated with a theatre;
 - (iii) the holding of conferences for all purposes;
 - (iv) the holding of educational gatherings for all purposes;
 - (v) the holding of social leisure and religious functions;

- (vi) restaurants and other facilities for the sale of food and beverages of all descriptions to both guests within the hotel and the public at large;
- (vii) such other uses as may from time to time be reasonably considered to be commensurate with the principal use of the Premises as a high class hotel.

THIS LEASE is made on the date stated at the head of the Particulars and between the parties specified therein

1 DEFINITIONS

1.1 Definitions

In this Lease the expressions in the first column of the Particulars have the meanings given in the second column and the following words and expressions have the following meanings:

1.1.1 **Associated Company** means any company which is (in relation to another company) its parent undertaking or its subsidiary undertaking or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control direct or indirect and **parent undertaking** and **subsidiary undertaking** shall have the meanings given in Sections 258 and 259 of the Companies Act 1985

1.1.2 **Chattels** means all of the chattels, equipment, fittings and other things (not being in the nature of landlord's fixtures and fittings) presently within the Premises and used or capable of being used for the purposes of carrying on therefrom the business of a modern high class 4 Star (or equivalent) hotel in accordance with all aspects of the Permitted Use as the same are specified in the Inventory of Chattels annexed hereto

1.1.3 **Conduits** means all sewers drains pipes gulleys gutters ducts flues watercourses channels subways wires cables and other conducting media of whatsoever nature

1.1.4 **Full Cost of Reinstatement** shall mean the reasonable and proper costs (including the cost of shoring up demolition and site clearance architects' surveyors' and other professional fees and incidental expenses with VAT thereon in each case) which would be likely to be incurred in or as a result of rebuilding or reinstating the Premises in accordance with the requirements of this Lease at the time when such rebuilding or reinstatement is likely to take place having regard to all relevant factors including any increases in building costs expected or anticipated to take place at any time up to the date upon which the Premises shall be fully rebuilt or reinstated

1.1.5 **Group Company** means any company which falls within the same group as another company or its holding company, including (without limitation) any of the following:

- (a) all subsidiaries of such company or its holding company
- (b) any holding company
- (c) any company which is another subsidiary of any holding company

in each case within the meaning of Sections 736 and 736A of the

Companies Act 1985

- 1.1.6 **Inferior Lease** means the sublease brief details of which are set out in Part 4 of Schedule 3
- 1.1.7 **Initial Rent** means THREE MILLION ONE HUNDRED AND FIFTY THOUSAND POUNDS per annum (£3,150,000 p.a.) (exclusive of VAT)
- 1.1.8 **Insured Risks** means risks in respect of loss, damage or destruction by fire, storm, lightning, earthquake, explosion, riot, civil commotion, strikes, labour and political disturbances and malicious damage, terrorism, aircraft and other aerial devices or articles dropped therefrom, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes and impact by road vehicles, subsidence, ground slip and heave (to the extent that insurance against such risks may ordinarily be arranged in the United Kingdom insurance market) and also against third party risks and property owner's liability and such other risks (whether or not of a like kind) or insurance (not being those against which the Tenant shall also have insured in accordance with its obligations in that regard contained in this Lease) as the Landlord may from time to time deem to be desirable but subject in every case to such normal excesses exclusions and limitations from time to time imposed by the Insurers
- 1.1.9 **Insurers** means the insurance office or underwriters with whom the insurance cover referred to in Clause 5.2 is effected
- 1.1.10 **Landlord** shall include the person for the time being entitled to the reversion immediately expectant on the determination of the Term
- 1.1.11 **Landlord's Surveyor** means an associate or fellow of the Royal Institution of Chartered Surveyors who is a partner or director in a firm or company (as the case may be) of chartered surveyors experienced in all aspects of property in the nature and in the location of the Premises or alternatively a surveyor in the employ of the Landlord with equivalent professional and practical qualifications who shall in all matters act as an independent expert and owe a duty as such to both the Landlord and the Tenant and has adequate professional indemnity cover (including run-off cover)
- 1.1.12 this **Lease** means this lease and any document which is supplemental hereto or which is collateral herewith or which is entered into pursuant to or in accordance with the terms of this Lease
- 1.1.13 **Local Authority** means a county council a district council a London borough council a parish or community council a county borough council or any joint or unitary authority and any other body falling within the definition of local authority in Section 336 of the Town and Country Planning Act 1990 (as amended from time to time)
- 1.1.14 **Loss of Rent** means the loss of the Yearly Rent for 36 calendar months

- 1.1.15 **Planning Acts** means Town and Country Planning Act 1990 Planning (Listed Buildings and Conservation Areas) Act 1990 Planning (Hazardous Substances) Act 1990 and Planning (Consequential Provisions) Act 1990
- 1.1.16 **Premises** means the land and premises described in Schedule 1 and each and every part thereof together with the appurtenances thereto belonging and together also with any buildings and erections and each and every part thereof now or hereafter erected or in the course of erection thereon or on any part thereof together with all additions alterations and improvements thereto which may be carried out during the Term and shall also include all landlord's fixtures and fittings from time to time in and about the same and the Chattels
- 1.1.17 **Prescribed Rate** means a rate of interest being 3% above the Base Rate from time to time of Barclays Bank Plc or over such other rate as may from time to time replace the same or over such other rate as the Landlord may from time to time reasonably require
- 1.1.18 **Quarter Day** means each of 25th March 24th June 29th September and 25th December in each year and references to **Quarter Days** and **usual Quarter Days** shall be construed accordingly
- 1.1.19 **Superior Landlord** means any person who at any time holds an interest in reversion (whether or not immediate) to any lease under which the Landlord may at any time hold its interest in the Premises and **Superior Leases** shall be construed accordingly
- 1.1.20 **Surety** means any person for the time being guaranteeing the obligations of the Tenant and in the case of an individual shall include his personal representatives
- 1.1.21 **Tenant** shall include its successors in title and in the case of an individual shall include his personal representatives
- 1.1.22 **Term** means the Contractual Term together with any continuation thereof or of the tenancy (whether under an Act of Parliament or by the Tenant holding over or for any other reason) arising therefrom but in respect of such period of continuation or holding over to apply only to those obligations of the Tenant in occupation at such time including for the avoidance of doubt any extension under the terms of this Lease
- 1.1.23 **VAT** means value added tax as provided for in the Value Added Tax Act 1994 and legislation (delegated or otherwise) supplemental thereto and any similar tax replacing or introduced in addition to the same
- 1.1.24 **Working Day** means any day (except Saturday or Sunday) when the United Kingdom clearing banks are open for business in the City of London
- 1.1.25 **Yearly Rent** means the Initial Rent or the rent payable from time to time in accordance with the provisions of Clause 7 and Schedule 2

- 1.1.26 **1927 Act** means the Landlord and Tenant Act 1927
- 1.1.27 **1954 Act** means the Landlord and Tenant Act 1954 (as amended)
- 1.1.28 **1995 Act** means the Landlord and Tenant (Covenants) Act 1995

1.2 **Construction and Interpretation**

The following rules of construction and interpretation apply to each and every part of this Lease:

1.2.1 ***Any Superior Landlord or Mortgagee***

In the following cases references to "the Landlord" are to be construed as extending to any Superior Landlord and to any mortgagee of the Landlord or of any Superior Landlord:

- (a) where there are rights easements exceptions and reservations in favour of or exercisable by the Landlord
- (b) where there is an obligation to obtain the approval or consent of the Landlord or to give notice to the Landlord (but nothing in this Lease is to be construed as implying that consent or approval of any Superior Landlord or mortgagee will not be unreasonably withheld)
- (c) where there is provision for repayment of any expenses to the Landlord
- (d) where there are any indemnities in favour of the Landlord

1.2.2 ***Entry to the Premises***

- (a) Any right granted to or reserved by the Landlord to enter the Premises is to be construed as extending to all persons authorised by the Landlord and by any Superior Landlord and by any mortgagee of either of them and as a right to enter with or without workmen equipment and materials
- (b) Authority given by the Tenant to enter the Premises after a reasonable or other specified period of notice extends (if justified by the circumstances) to entry after a shorter period of notice or to entry without any notice

1.2.3 ***Indemnities***

Any indemnities given by the Tenant are to be construed as obligations to keep the specified persons indemnified against legal liability in respect of all proceedings damages penalties costs expenses claims and demands arising directly as a result of a relevant act omission or default of the Tenant

1.2.4 ***Successors to original parties***

References to "the Landlord" include the person for the time being entitled to the reversion immediately expectant on the determination of the Term (or where such person or the Landlord is an individual his personal representatives) and to "the Tenant" include the successors in title and assigns of the Tenant (or where the Tenant is an individual his personal representatives) and to "the Surety" (if any) include the personal representatives of any such person (if an individual)

1.2.5 ***Tenant's covenants***

Any covenant by the Tenant not to do any act or thing is where appropriate to be construed additionally as a covenant by the Tenant not to permit or suffer such act or thing to be done by any other person being an agent servant invitee or licensee

1.2.6 ***Joint and several obligations***

Where the Landlord or the Tenant or the Surety (if any) at any time consists of more than one person obligations expressed or implied on the part of such party are joint and several obligations

1.2.7 ***Tenant's default***

Unless the context otherwise requires where in this Lease there is reference to the consequences of the Tenant's acts omissions and defaults all references to "the Tenant" include references to the Tenant's undertenants or their respective agents servants invitees or licensees and to anyone at the Premises with the express or implied authority of the Tenant or its undertenants

1.2.8 ***This Lease***

This Lease is to be construed and interpreted as incorporating any variation addition or qualification which is expressed to relate to it contained in any deed made between the Landlord and the Tenant whether or not any person who is the Surety is a party and including but not limited to all licences granted by the Landlord to the Tenant but not so as to impose upon any person liability under this Lease which would be precluded by s.18 of the Landlord and Tenant (Covenants) Act 1995

1.2.9 ***Statutes***

Except for any references to the Town and Country Planning (Use Classes) Order 1987 (if any) any reference to any statute includes any modification extension or re-enactment of such statute for the time being in force and any instruments regulations directions orders or permissions made under it

1.2.10 ***Premises***

References to the Premises (except Clauses 3.18, 3.19 and 3.20) shall be construed as extending to any part of the Premises

1.2.11 ***Effect of the 1995 Act***

Wherever and to the extent that any provision of this Lease would or might contravene the provisions of s.25 of the 1995 Act then:

- (a) such provision is to take effect only in so far as it may do so without contravening s.25 of the 1995 Act and
- (b) where such provision is incapable of having any effect without contravening s.25 of the 1995 Act this Lease is to be construed and interpreted as if such provision were deleted and
- (c) the legality validity and enforceability of any of the remaining provisions of this Lease is not in any way to be affected or impaired as a result

1.2.12 ***Tenant's insurance obligations***

Any insurance policy shall be deemed to have been "voided" if it has been rendered void or vitiated or if payment of any policy monies has been refused in whole or part by reason of any act omission neglect or default of the Tenant its undertenants or their respective agents servants invitees or licensees

1.2.13 ***Gender singular and plural***

Words importing one gender include other genders and words importing the singular include the plural and vice versa

1.2.14 ***Particulars contents and headings***

The particulars form part of this Lease but the clause paragraph and schedule headings and any table of contents are not to be taken into account in the construction and interpretation of this Lease

2 DEMISE AND RENTS

In consideration of the rents reserved by and the Tenant's covenants and conditions contained in this Lease the Landlord DEMISES the Premises to the Tenant TOGETHER WITH the easements and other rights (in common with the Landlord and all other persons having its express or implied authority and all other persons having like rights) specified in Part 1 of Schedule 3 EXCEPTING AND RESERVING to the Landlord (and all other persons authorised by the Landlord from time to time during the Term) the easements and other rights specified in Part 2 of Schedule 3 TO HOLD the Premises unto the Tenant from and including the Term Commencement Date for the Term SUBJECT (a) to all rights easements quasi-easements and privileges to which the Premises are or may be subject and (b) the matters set out in Part 3 of Schedule 3 AND SUBJECT to and with the benefit of the Inferior Lease YIELDING AND PAYING to the Landlord as rent:

- 2.1 **FIRSTLY** throughout the Term (and proportionately for any part of a year) the Yearly Rent (increasing in accordance with the provisions of Clause 7 and Schedule 2) to be paid in advance by equal quarterly instalments on the usual Quarter Days the first instalment or a proportion thereof (calculated on a daily basis) in respect of the period beginning on the Rent Start Date and ending on the day immediately preceding the next Quarter Day to be paid on the date of this Lease
- 2.2 **SECONDLY** by way of additional rent on receipt of a written demand therefor the cost to the Landlord of insuring the Premises against the Insured Risks and of effecting the Loss of Rent insurance and the reasonable and proper cost of valuing the Premises for insurance purposes from time to time (but not more than once in any twelve month period)
- 2.3 **THIRDLY** by way of additional rent on demand the moneys referred to in Clause 3.2
- 2.4 **FOURTHLY** by way of additional rent all VAT for which the Landlord is or may become liable on the supply by the Landlord to the Tenant under or in connection with this Lease of the interest created by it and of any other supplies (whether of goods or services) including (but not limited to) all rents and other sums payable under this Lease such VAT to be paid at the same time as the sums to which it relates

3 **TENANT'S COVENANTS**

The Tenant **HEREBY COVENANTS** with the Landlord as follows:

3.1 **To pay rent**

To pay the Rents reserved by this Lease at the times and in the manner set out in this Lease without any deduction set-off or counterclaim (save as required by law)

3.2 **To pay interest on overdue monies**

That without prejudice to any other right remedy or power contained in this Lease or otherwise available to the Landlord if any Yearly Rent shall not be received on the due date or any other Rents shall not be received within 14 days of the due date for payment thereof then in any such case to pay on receipt of written demand to the Landlord interest thereon at the Prescribed Rate (to be compounded on the usual Quarter Days) from the date when the same became due until payment thereof is received (as well after as before any judgment)

3.3 **To pay outgoings and supplies**

3.3.1 To bear pay and discharge all existing and future rates taxes duties charges assessments impositions and outgoings whatsoever (whether parliamentary parochial local or otherwise and whether or not of a capital or non-recurring nature) which now are or may at any time hereafter during the Term be charged levied assessed or imposed upon or properly apportioned by the Landlord's Surveyor (acting properly) to the Premises or upon the owner or occupier in respect thereof PROVIDED ALWAYS that the foregoing shall not extend to payment

of any tax payable only as a direct result of any dealing by the Landlord with its reversionary interest in the Premises

- 3.3.2 Where a separate supply is provided to the Premises to pay the supplier and to indemnify the Landlord against all charges for electricity gas water sewage telecommunications data and other supplies consumed on the Premises and to pay all equipment rents

3.4 **Insurance Obligations**

- 3.4.1 Not to do or omit or suffer to be done or omitted anything which may make void or voidable any policy of insurance of the Premises Provided that the Landlord shall have first provided the Tenant with a copy of the relevant current policy of such insurance
- 3.4.2 To comply with the reasonable and proper requirements and recommendations from time to time of the Insurers
- 3.4.3 To notify the Insurers and the Landlord forthwith on the occurrence of any damage occasioned by any Insured Risk at the Premises
- 3.4.4 To notify the Landlord of any new landlord's fixtures and fittings installed from time to time in the Premises by the Tenant or any undertenant which may affect any insurances
- 3.4.5 In the event of the Premises or any part thereof being damaged or destroyed by any of the Insured Risks at any time during the Term and the insurance money under any policy of insurance effected thereon being wholly or partially voided then and in every such case the Tenant will forthwith pay to the Landlord the whole or (as the case may require) the voided proportion of the cost of rebuilding and reinstating the same
- 3.4.6 To insure and at all times keep insured the Premises against all Tenant's third party public and occupiers liability risks for a sum to be first approved by the Landlord being not less than Five million pounds (£5,000,000) for any one occurrence and to effect such insurance in some reputable insurance office and upon every request by the Landlord (such request not to be made more than once in any 12 month period) forthwith to produce particulars of the policy of such insurance and the receipt for every premium for the then current year payable in respect of such policy PROVIDED ALWAYS THAT if and whenever default shall be made in making and keeping on foot such insurance as aforesaid or in producing in the manner aforesaid such evidence or policy or receipt as aforesaid the Landlord may effect and maintain such insurance and the Tenant shall repay all monies paid by the Landlord for that purpose to the Landlord within 14 days of demand and the cost thereof shall be a debt due from the Tenant to the Landlord and be forthwith recoverable by action PROVIDED ALWAYS THAT for so long only as this Lease is vested in Accor UK Business and Leisure Hotels Limited or any Group Company thereof then the aforesaid obligations of the Tenant to adduce evidence of the existence of insurance shall be deemed

discharged by the unconditional written confirmation by the Tenant that the terms of this Clause 3.4.6 are being complied with

- 3.4.7 Other than in accordance with Clause 3.4.6 not to effect any insurance policy to cover the Insured Risks but if in breach of this covenant to pay to the Landlord all monies received under such policy in connection with the Landlord's obligations under Clause 5.2 of this Lease

3.5 To repair

At all times during the Term to keep the Premises in good and substantial repair and condition and to maintain renew and replace (where uneconomical to repair) the same damage or destruction by any of the Insured Risks excepted (unless and to the extent that the relevant insurance policy has been voided) PROVIDED THAT nothing herein shall require the Tenant to keep the Premises in a better state of repair than the same are now in as is evidenced by the Schedule of Condition and Inventory of Chattels annexed hereto

3.6 To decorate exterior

As often as shall reasonably be necessary during the Term (having regard to the proposed use of the Premises as a high class hotel) to properly prepare and thereafter to paint in a good and workmanlike manner with two coats at least of good quality paint of a colour which if different from the present colour shall be previously approved in writing by the Landlord's Surveyors (such approval not to be unreasonably withheld) all the exterior parts of the Premises as are usually or ought to be painted

3.7 To decorate interior

As often as shall reasonably be necessary during the Term (having regard to the proposed use of the Premises as a high class hotel) to properly prepare and thereafter to paint with two coats at least of good quality paint and to treat varnish decorate paper and plaster all the interior parts of the Premises as are usually or ought to be painted treated varnished papered or plastered and generally to redecorate throughout restoring and making good the Premises and to carry out all the works required by this Clause 3.7 in a good and workmanlike manner and in the last year of the Term (howsoever determined save where the same is extended pursuant to clause 10) such paintings and decorations to be executed in such colours and materials as the Landlord's Surveyors may reasonably require

3.8 To clean and treat surfaces

As often as may be reasonably necessary to clean treat and wash in an appropriate manner all materials surfaces and finishes of the Premises which ought normally to be so cleaned treated and washed

3.9 To keep premises clean and tidy

3.9.1 To keep the Premises in a clean and tidy condition

3.9.2 To keep all refuse waste and rubbish in a suitable container or

containers on the Premises or where the Landlord directs acting reasonably

3.10 To comply with notices to repair

Well and substantially to repair and make good all defects and wants of reparation repair or renewal of which notice in writing shall be given to or left on the Premises for the Tenant by the Landlord and for which the Tenant is liable hereunder and to commence the same within three calendar months after the receipt or leaving of such notice (or sooner if necessary) and if the Tenant shall fail to comply with any such notice within a reasonable time for so doing it shall be lawful (but not obligatory) for the Landlord (without prejudice to the right of re-entry hereinafter contained) to enter upon the Premises to make good the same at the cost of the Tenant which cost together with all Solicitors' and Surveyors' charges and other reasonable and proper expenses and losses which may be incurred by the Landlord in connection therewith shall be repaid by the Tenant to the Landlord on demand

3.11 To permit entry

To permit the Landlord and its agents and all persons authorised by them at all reasonable times with or without workmen on giving reasonable notice (except in emergency) to the Tenant to enter upon the Premises for the purpose of ascertaining that the covenants and conditions of this Lease have been observed and performed and to view the state of repair and condition thereof and to take a schedule of the Landlord's fixtures and of any dilapidations and to exercise the rights excepted and reserved by this Lease

3.12 Not to introduce dangerous things or allow contamination

- 3.12.1 Not to bring into the Premises or to place or store or permit to remain in or about the Premises any article or thing which is or may become dangerous offensive combustible inflammable radioactive explosive harmful polluting or contaminating other than items which are used normally in connection with the Permitted Use
- 3.12.2 To ensure that the Premises are not contaminated during the Term and to carry out or cause to be carried out all works and actions necessary to remove any such contamination and restore the Premises to a condition as though such contamination had not taken place and not to do anything on or relating to the Premises which does or might cause any pollution or contamination of any other premises or the environment
- 3.12.3 To obtain any authorisation licence consent or permission required under any legislation relating to pollution or contamination of the environment with respect to any use of or action or activity on the Premises before such use action or activity commences or occurs but not to implement any such authorisation licence consent or permission until it and any conditions attaching to it have been approved by the Landlord

3.13 Not to overload

Not to place in the Premises or to place or to carry in the lifts (if any) in the building any articles in such position or in such quantity or weight or otherwise in such manner howsoever as to overload or cause damage to the Premises or the lifts and not to overload the electrical wiring or installation or other Conduits in the Premises

3.14 Not to harm drains

Not to allow to pass into the Conduits serving the Premises any noxious or deleterious effluent or other substance which might cause any obstruction in or harm to the Conduits

3.15 User

3.15.1 Not to carry on or use the Premises for any noisy noisome offensive or dangerous trade manufacture business or occupation nor for any illegal or immoral purpose

3.15.2 Not to use the Premises otherwise than for the Permitted Use without the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed

3.15.3 The Tenant hereby acknowledges and admits that notwithstanding the foregoing provisions the Landlord does not thereby or in any other way give or make nor has given or made at any other time any representation or warranty that any such use is or will be or will remain a permitted use within the provisions of the Planning Acts nor shall any consent in writing which the Landlord may hereafter give to any change of use be taken as including any such representation or warranty and that notwithstanding that any such use as aforesaid is not a permitted use within such provisions as aforesaid the Tenant shall remain fully bound and liable to the Landlord in respect of the obligations undertaken by the Tenant by virtue of this Lease without any compensation recompense or relief of any kind whatsoever

3.16 Not to make alterations

3.16.1 Not to make any alterations or additions whatsoever in or to the Premises (save for signage and minor internal non structural alterations) or to the Conduits exclusively serving the Premises without the previous consent in writing of the Landlord (not to be unreasonably withheld)

3.16.2 When applying for the consent of the Landlord hereunder to supply to the Landlord four copies of plans and specifications showing the nature and extent of the alterations or additions which the Tenant wishes to carry out and to pay the Landlord in respect of all reasonable costs and expenses which the Landlord may incur whether by way of surveyors' or legal expenses in connection with the consideration approval and supervision of the alterations and additions and to carry out the said alterations or additions only in accordance

with the plans and specifications approved in writing by the Landlord (such approval not be unreasonably withheld or delayed) and in accordance with all statutory and local authority and Insurers' requirements and recommendations

- 3.16.3 In the event of the Tenant failing to observe this covenant it shall be lawful for the Landlord and its agents or surveyors with or without workmen and others and all persons authorised by the Landlord with all necessary materials and appliances to enter upon the Premises on reasonable prior notice (save in emergency) and remove any alterations or additions and execute such works as may be necessary to restore the Premises to their former state and the costs and expenses thereof together with all solicitors' and surveyors' charges and other expenses and losses of a direct nature which may be incurred by the Landlord in connection therewith shall be repaid by the Tenant to the Landlord on demand

3.17 Not to prejudice easements

- 3.17.1 Not by building or otherwise to stop up or darken any window or light in the Premises nor to stop up or obstruct any access of light enjoyed by the Premises to any adjoining or neighbouring premises nor permit any new wayleave easement right privilege or encroachment to be made or acquired into against or upon the Premises and in case any such easement right privilege or encroachment shall be made or attempted to be made to give immediate notice thereof to the Landlord and to permit the Landlord and its agents to enter upon the Premises for the purpose of ascertaining the nature of any such easement right privilege or encroachment and at the request of the Landlord but at the cost of the Tenant to adopt such means as may be reasonably required or deemed proper for preventing any such encroachment or the acquisition of any such easement right privilege or encroachment
- 3.17.2 Not to give to any third party any acknowledgement that the Tenant enjoys the access of light to any of the windows or openings in the Premises by the consent of such third party nor to pay to such third party any sum of money nor to enter into any agreement with such third party for the purpose of inducing or binding such third party to abstain from obstructing the access of light to any windows or openings and in the event of any of the owners or occupiers of adjacent land or buildings doing or threatening to do anything which obstructs the access of light to any of the said windows or openings to notify the same forthwith to the Landlord and to permit the Landlord to bring such proceedings as it may think fit in the name of and at the cost of the Tenant against any of the owners and/or occupiers of the adjacent land in respect of the obstruction of the access of light to any of the windows or openings in the Premises

3.18 Alienation

- 3.18.1 Not (save as hereinafter permitted) to assign transfer mortgage charge underlet part with or share possession or occupation of the whole or any part of the Premises

- 3.18.2 Not to part with or share possession of the whole or any part of the Premises or permit any company or person to have occupation or possession of the whole or any part of the Premises except by way of:
- (a) an assignment or transfer of the whole of the Premises in accordance with the provisions of Clause 3.19 or
 - (b) an underlease in accordance with the provisions of Clause 3.20
- 3.18.3 Not to permit the Premises or any part of them to be held on trust for or by any person body or corporation

3.19 Assignment

- 3.19.1 Not to assign any part or parts of the Premises (as opposed to the whole)
- 3.19.2 Not to assign the whole of the Premises unless the circumstances and conditions set out in this Clause 3.19.2 (which the parties accept within the contemplation of Section 19(1A) of the 1927 Act) have been complied with and satisfied, namely:
- (a) that all arrears of Rents and other monetary payments properly due under the terms of this Lease have been paid prior to the completion of the intended assignment
 - (b) that all other material breaches of the Tenant's covenants and conditions in this Lease have been remedied to the reasonable satisfaction of the Landlord
 - (c) that the Tenant has produced to the Landlord an undertaking from its solicitors in such form as may be reasonable in the circumstances to pay all fair and reasonable costs and disbursements (including irrecoverable VAT) which may be reasonably and properly incurred by the Landlord in connection with the application for consent including without prejudice to the generality of the foregoing its solicitors' costs, surveyors' costs and the costs of any accountants (in each case to be reasonable and proper) employed to advise on whether the intended assignee satisfies any financial criteria specified in this Lease or is a person of such financial standing that it is reasonable for the Landlord to grant licence for the assignment of this Lease to it
 - (d) that the assignee (or any party guaranteeing the assignee in the terms of Schedule 4) has continuously for a period of three years immediately preceding the intended date of completion of the proposed assignment held a credit rating as described in Clause 3.19.3 or that the assignee (or any party guaranteeing the assignee in the terms of Schedule 4) is able to show to the reasonable satisfaction of the Landlord that it would have satisfied the criteria necessary to acquire and hold such a

credit rating throughout the said period of three years if an application had been made to obtain such credit rating

- (e) that the Tenant (and any then current surety of the Tenant) delivers to the Landlord a deed (being an authorised guarantee agreement within Section 16 of the 1995 Act) in substantially the form set out in Schedule 5 but subject to such amendments as may be necessary to comply with Section 16 of the 1995 Act and/or reasonably required by the Landlord.

3.19.3 The credit rating above referred to shall (subject to Clauses 3.19.4 and 3.19.5) be a credit rating equal to or better than that held by Accor SA at the date of the proposed assignment as determined by Standard & Poor's Ratings Group a division of McGraw Hill Inc ("S&P") or Moodys Investors Service ("Moody's") in respect of the senior unsecured and unguaranteed long-term debt obligations of Accor SA

3.19.4 The credit ratings referred to in Clause 3.19.3 shall be determined in accordance with the rating criteria, mechanism and procedure adopted by S&P or Moody's (as appropriate) as at the date of this Lease PROVIDED THAT:

- (a) if for any reason during the Term S&P or Moody's cease to exist the relevant credit ratings for the purposes of Clause 3.19.3 shall be substituted with the equivalent credit rating (determined by applying substantially similar rating criteria, mechanism and procedure as those employed at the date of this Lease by S&P or (as the case may be) Moody's) assigned by such alternative body or bodies as the Landlord shall in its reasonable opinion determine as being reasonably equivalent to S&P and/or Moody's (as the case may be) and which shall be notified to the Tenant on application to the Landlord or
- (b) if for any reason during the Term S&P or Moody's adopt a rating criteria, mechanism or procedure which is materially different to that in operation at the date of this Lease the relevant credit rating for the purposes of Clause 3.19.3 shall be substituted with a credit rating equivalent to the formerly designated rating (determined by applying substantially similar rating criteria, mechanism and procedure to those adopted at the date of this Lease by S&P or (as the case may be) Moody's for determining such formerly designated rating)

3.19.5 Any dispute or question between the parties hereto concerning the rating criteria, mechanism or procedure that is adopted by S&P or Moody's (as the case may be) at the date of this Lease shall be referred at the request of either party for determination by a single arbitrator to be appointed either by agreement between the parties or in the absence of agreement to be appointed on the application of either party to the President for the time being of the Institute of Chartered Accountants in England and Wales and shall be determined in accordance with the Arbitration Act 1996 who shall have full power to determine what would have been the rating criteria mechanism and

procedure had S&P or Moody's continued to provide the credit rating service that exists at the date of this Lease

- 3.19.6 Subject as aforesaid the Tenant shall be permitted to assign the whole of the Premises with the prior written consent of the Landlord which shall not be unreasonably withheld or delayed

3.20 Underletting

- 3.20.1 Not to underlet or agree to underlet the whole or any part or parts only of the Premises otherwise than as provided in this Clause 3.20

- 3.20.2 Not to underlet or agree to underlet the whole or any part of the Premises or permit any person to occupy or share occupation of the whole or any part of the Premises at a fine or premium nor at a rent which is less than the open market rent for the underlet premises nor to permit (by whatever means) the reduction of rent paid or payable by any undertenant

- 3.20.3 Not to underlet or agree to underlet the whole or any part of the Premises without first procuring:

- (a) that any intended undertenant shall covenant with the Landlord as from the date of the underlease to observe and perform the covenants and conditions contained in this Lease (excluding the covenant to pay the Rents) and not to underlet share or part with possession or occupation of the underlet premises and not without the prior written consent of the Landlord to assign the underlet premises and that such covenants are included in the underlease so far as they are applicable to the underlet premises
- (b) that in any permitted underlease the rent shall be payable no more than one quarter in advance and shall be subject to open market review in an upward direction only at intervals of not more than five years
- (c) if reasonably required by the Landlord in the case of a letting to a private limited company there is provided a guarantor(s) reasonably acceptable to the Landlord for such company who prior to such letting but with effect therefrom (jointly and severally if more than one) shall enter into:
 - (i) surety covenants with the Tenant in a similar form to those set out in Schedule 4 and
 - (ii) a covenant with the Landlord to observe and perform such surety covenants

- 3.20.4 Not to underlet or agree to underlet or permit any undertenant to underlet any part (as opposed to the whole) of the Premises without first procuring that additionally:

- (a) the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded from the underletting pursuant to a prior Order of a Court of competent jurisdiction and
 - (b) following the grant of such underlease the total number of lettings of the Premises (including this Lease but excluding franchises granted in accordance with clause 3.20.8 hereof) then extant is no more than 6
 - (c) any such underlease shall contain provisions enabling the Tenant (as lessor) to recover from the undertenant a due proportion of the cost of insuring repairing decorating and operating the Premises
- 3.20.5 Subject as aforesaid the Tenant shall be permitted to underlet the Premises as a whole or in part with the prior written consent of the Landlord which shall not be unreasonably withheld or delayed
- 3.20.6 In relation to any underlease not without the prior written consent of the Landlord (which shall not be unreasonably withheld or delayed) to:
 - (a) waive or vary any provisions of an underlease
 - (b) accept a surrender of part only of any underlet premises
- 3.20.7 Nothing in this Lease shall prevent the Tenant from sharing the use or occupation of the Premises or any part of the Premises with any Associated Company or Group Company of the Tenant PROVIDED THAT:
 - (a) no relationship of landlord and tenant giving rise to security of tenure is created at any time
 - (b) the Tenant shall give to the Landlord not less than one month's prior written notice of such proposed occupation and the cessation thereof and
 - (c) any such occupation of the Premises or any part thereof shall cease upon the Associated or Group Company in occupation ceasing to be an Associated or Group Company whereupon such company shall forthwith vacate the Premises or such part thereof of which it is in occupation
- 3.20.8 Nothing in this Lease shall prevent the Tenant from using the Premises for the Permitted Use or from granting franchises (not being tenancies or otherwise affording security of tenure) in respect of any retail accommodation lawfully within the Premises from time to time or from concluding operating agreements (not being tenancies or otherwise affording security of tenure) for the use of the theatre within the Premises

3.21 To give details of underleases

Whenever reasonably requested (but not more than twice in any calendar year) by the Landlord to supply a schedule of underleases or franchises granted in respect of the Premises (however remote) to include details of (i) the date (ii) the premises let (iii) the term (iv) the parties and (v) the rent

3.22 Registration

Within one month after the date of any assignment transfer or any underlease of the Premises or the execution of any mortgage or charge affecting this Lease as aforesaid or any assignment or transfer of any such mortgage or charge or underlease as aforesaid whether by deed assent or operation of law or otherwise to give written notice and to deliver a certified copy to the Landlord's solicitors (or as the Landlord may from time to time direct) of such assignment transfer underlease assignment of underlease mortgage charge transfer of mortgage or charge or devolution as aforesaid and to pay or cause to be paid to the Landlord's solicitors or as the Landlord may from time to time direct a reasonable fee not being less than Twenty-five pounds for the registration thereof

3.23 To pay Landlord's costs

To pay to the Landlord on receipt of written demand all reasonable and proper direct costs charges expenses damages and losses (including but without prejudice to the generality of the foregoing solicitors' costs counsels' architects' and surveyors' and other professional fees and commissions payable to a bailiff) incurred by the Landlord:

3.23.1 incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 and/or in or in contemplation of any proceedings under Section 146 or 147 of the said Act (whether or not any right of re-entry or forfeiture has been waived by the Landlord or a notice served under the said Section 146 is complied with by the Tenant or the Tenant has been relieved under the provisions of the said Act and notwithstanding forfeiture is avoided otherwise than by relief granted by the court)

3.23.2 incidental to the preparation and service of a Schedule of Dilapidations at any time during or within 6 calendar months after the expiration or earlier determination of the Term relating to wants of repair for which the Tenant was responsible and which arose during the Term

3.23.3 in connection with or procuring the remedying of any breach of covenant on the part of the Tenant or any person deriving title under the Tenant contained in this Lease

3.24 To observe statutory requirements

At all times and from time to time and at its own expense to execute all works as are or may under or in pursuance of any current Act of Parliament or European Community Law Regulation or Directive already or hereafter to be passed be directed or required to be done or executed upon or in respect of the Premises or

the user thereof whether by the owner and/or the Landlord and/or the Tenant thereof or any person deriving title thereunder and to comply with all notices which may be served by the public local or statutory authority and not to do on the Premises any act or thing whereby the Landlord may become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any such Act as aforesaid

3.25 **Planning**

In relation to the Planning Acts:

- 3.25.1 At all times during the Term to comply in all respects with the Planning Acts and to keep the Landlord indemnified in respect thereof
- 3.25.2 Save in the case of signage or where permission has already been granted to alterations pursuant to clause 3.16 not to apply for any planning permission or other planning consent in respect of the Premises unless the application permission or other consent shall have been approved in writing by the Landlord such consent not to be unreasonably withheld or delayed
- 3.25.3 Unless the Landlord shall otherwise direct to carry out before the expiration or determination of the Term (howsoever the same may be determined) any works stipulated to be carried out to the Premises by a date subsequent to such expiration or sooner determination as a condition of any planning permission which the Tenant has implemented or partially implemented
- 3.25.4 Forthwith after receiving notice of the same to give full particulars to the Landlord of any order notice certificate designation direction or other such matter or any proposal therefor made given or issued to the Tenant by any competent authority under or by virtue of the Planning Acts affecting or capable of affecting the Premises and if so required by the Landlord to produce such matter or proposal therefor to the Landlord
- 3.25.5 At the request of the Landlord to make or join with the Landlord in making such objection or representation against or in respect of any proposal referred to in the previous sub-clause as the Landlord shall deem expedient
- 3.25.6 If called upon so to do to produce to the Landlord all plans documents and other evidence as the Landlord may reasonably require in order to satisfy itself that the provisions of this sub-clause have been complied with (but in any event not more than 4 copies)
- 3.25.7 Not without the consent of the Landlord to enter into any planning obligation under Section 106 of the Town and Country Planning Act 1990
- 3.25.8 Not without the consent of the Landlord to serve any notice under Part VI of the Town and Country Planning Act 1990

3.26 To inform Landlord of notices

When the Tenant becomes aware of the happening of any occurrence or upon the receipt of any notice order requisition direction or other thing which may be capable of adversely affecting the Landlord's interest in the Premises the Tenant shall forthwith at its own expense deliver full particulars or a copy thereof to the Landlord

3.27 To inform Landlord of contaminants and defects

As soon as the Tenant becomes aware of the same to inform the Landlord immediately in writing of the existence of any contaminant or pollutant on or any defect in the Premises which might give rise to a duty imposed by common law or statute on the Landlord

3.28 Indemnities

To indemnify the Landlord in respect of all actions proceedings costs claims and demands and any liability arising in any way directly out of:

- 3.28.1 any act omission or negligence of the Tenant its undertenants or any persons at the Premises expressly or impliedly with the authority of the Tenant or its undertenants
- 3.28.2 the use or occupation of the Premises
- 3.28.3 any defect in the Premises caused by the execution of any alterations additions or repairs to the Premises by the Tenant its undertenants or any persons at the Premises expressly or impliedly with the authority of the Tenant or its undertenants
- 3.28.4 third party claims which ought to have been covered by insurance effected by the Tenant pursuant to Clause 3.4.6
- 3.28.5 anything now or during the Term attached to or brought onto the Premises by the Tenant its undertenants or any persons at the Premises expressly or impliedly with the authority of the Tenant or its undertenants
- 3.28.6 any breach or non-observance (however remote) of any covenant on the part of the Tenant contained in this Lease

3.29 Applications for consent

Upon making an application for any consent or approval which is required under this Lease the Tenant shall disclose to the Landlord such information as the Landlord may reasonably require and shall pay on demand all reasonable and proper costs charges and expenses (including without limitation legal costs surveyors' fees disbursements and stamp duty) incurred by the Landlord resulting from all such applications by the Tenant whether such consent or approval is granted refused or offered subject to any qualifications or is withdrawn

3.30 To remedy breaches by undertenants

In the event of a breach non-performance or non-observance of any of the covenants conditions agreements and provisions contained or referred to in this Lease by any undertenant or other person holding the Premises as undertenant of the Tenant forthwith upon discovering the same to take and institute at its own expense all necessary steps and proceedings to remedy such breach non-performance or non-observance

3.31 Yielding up

3.31.1 Immediately prior to the expiration or sooner determination of the Term at the cost of the Tenant:

- (a) to replace any of the Landlord's fixtures and fittings which shall be missing broken damaged or destroyed with others of a similar character and of equal value
- (b) to remove every moulding sign writing or painting of the name or business of the Tenant or other occupiers from the Premises and to remove all tenant's fixtures and fittings furniture and effects from the Premises making good to the reasonable satisfaction of the Landlord all damage caused by any such removal
- (c) if so requested by the Landlord to remove and make good all alterations or additions made to the Premises at any time during the Term and well and substantially to reinstate the Premises in such manner as the Landlord shall reasonably direct

3.31.2 At the expiration or sooner determination of the Term (howsoever the same be determined but subject to the provisions of Clause 9) to yield up to the Landlord the Premises as an operational modern high class 4 Star (or equivalent) hotel in accordance with all aspects of the Permitted Use in such good and substantial repair and condition as shall be in accordance with the covenants on the part of the Tenant contained in this Lease together with all fixtures fittings improvements and additions which now are or may at any time hereafter be in or about the Premises (but excepting tenant's fixtures and fittings)

3.32 To pay VAT

To pay to the Landlord by way of additional rent on receipt of a valid VAT invoice any VAT at the rate for the time being in force that may be chargeable in respect of any rent or other payment made or other consideration or supply provided by the Tenant under the terms of or in connection with this Lease and in every case where an amount of money is payable or consideration is provided under this Lease such amount or consideration shall be regarded as being exclusive of all VAT which may from time to time be legally payable thereon and such VAT shall be payable on the due date for the payment of such amount or the provision of such consideration

3.33 **Reimbursement of VAT**

In every case where the Tenant has agreed to reimburse the Landlord in respect of any payment made by the Landlord under the terms of or in connection with this Lease that the Tenant shall also reimburse any VAT paid by the Landlord on such payment unless the VAT is recoverable by the Landlord

3.34 **Substitution of surety**

To notify the Landlord within 28 days of any of the following events:

3.34.1 If any surety being an individual (or if individuals any one of them) shall become bankrupt or make any assignment for the benefit of or enter into any arrangement with his creditors either by composition or otherwise or have a receiver appointed under the Mental Health Act 1983

3.34.2 If any surety being an individual (or if individuals any one of them) shall die

3.34.3 If any surety being a company (or if companies any one of them) shall be wound up either voluntarily (save for the purpose of amalgamation or reconstruction) or compulsorily or shall have a receiver or an administrative receiver appointed or shall for any reason be removed from the Register of Companies

and within 56 days of any such requirement by the Landlord to procure that some other person or company reasonably acceptable to the Landlord shall execute a guarantee in the form set out in Schedule 4

3.35 **Superior title restrictions**

To observe and perform the covenants and other matters contained or referred to in the entries on the Register of the freehold title out of which this Lease is granted so far as the same affect the Premises and are still subsisting and capable of taking effect

4 **SURETY'S COVENANTS**

The Surety **HEREBY COVENANTS** with the Landlord in the manner set out in Schedule 4

5 **LANDLORD'S COVENANTS**

The Landlord **HEREBY COVENANTS** with the Tenant as follows:

5.1 **Quiet enjoyment**

That the Tenant paying the rents hereby reserved and performing and observing the covenants and agreements on the part of the Tenant contained in this Lease shall and may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person rightfully claiming through under or in trust for it

5.2 Insurance

- 5.2.1 At all times during the Term (save to the extent that such insurance shall be voided and subject to such exclusions and qualifications as the Insurers shall require) to insure and keep insured the Premises in some reputable insurance office on normal market terms against loss or damage by the Insured Risks in the Full Cost of Reinstatement and also against the Loss of Rent and whenever reasonably required (but not more frequently than once in every calendar year) to produce to the Tenant relevant details of such insurance and evidence of the payment for the last premium for the same and to ensure that the Tenant's interest is noted on the policy
- 5.2.2 In the event the Premises or any part thereof shall be damaged or destroyed by any of the Insured Risks (and so long as such insurance shall not have been voided) as soon as practicable after the necessary labour and materials and any necessary permissions shall have been obtained (and having used reasonable endeavours to obtain such permissions) to cause all monies received in respect of such insurance (other than for the Loss of Rent) to be laid out in reinstating the Premises or the relevant part thereof (the Landlord making up any shortfall from its own resources) PROVIDED ALWAYS THAT:
- (a) the Landlord shall not be under any obligation to insure any fixtures or fittings installed by the Tenant which have become part of the Premises unless the Tenant shall have previously notified the Landlord in writing of such installation together with the reinstatement value for insurance purposes of such fixtures or fittings and the Landlord has agreed in writing with the Tenant to effect such insurance at the cost of the Tenant
 - (b) the covenant by the Landlord as to reinstatement shall be satisfied if the Landlord provides in the premises so reinstated accommodation as convenient and commodious as is practicable but not necessarily identical to the Premises as the same existed prior to such damage or destruction and
 - (c) if any competent authority shall refuse permission for or otherwise lawfully prevent any rebuilding or reinstatement of the Premises or any rebuilding or reinstatement shall be otherwise impossible impracticable or frustrated all relevant insurance monies (so far as not laid out as aforesaid) shall as between the Landlord and the Tenant be receivable by the Landlord for its own use and benefit absolutely
- 5.2.3 The Landlord will at all times liaise with the Tenant in respect of all aspects of the insurances effected pursuant to the terms of this clause 5 though on the clear understanding that the Landlord retains an absolute discretion at all times as to the amount terms conditions and locus of any cover that may be put in place

6 PROVISOS

6.1 Forfeiture

Without prejudice to any other remedies and powers contained in this Lease or otherwise available to the Landlord:

- 6.1.1 If the Rents or any part thereof shall at any time be in arrear for twenty one days after the same shall have become due (whether formally demanded or not) or
- 6.1.2 If there shall be any material breach non-performance or non-observance of any of the covenants and conditions on the part of the Tenant contained in this Lease or
- 6.1.3 If a Bankruptcy Order or an Administration Order is made in respect of the Tenant or
- 6.1.4 If a resolution is passed or an Order is made for the winding-up of the Tenant otherwise than a member's voluntary winding-up of a solvent company for the purpose of amalgamation or reconstruction previously approved by the Landlord (such approval not to be unreasonably withheld) or
- 6.1.5 If a receiver or administrative receiver is appointed over the whole or any part of the property assets or undertaking of the Tenant or
- 6.1.6 If the Tenant is struck off the Register of Companies or is dissolved or (being a corporation or company incorporated outside Great Britain) is dissolved or ceases to exist under the laws of the country or state of its incorporation

THEN and in any such case it shall be lawful for the Landlord at any time thereafter (and notwithstanding the waiver of any previous right of re-entry) to re-enter into and upon the Premises or any part thereof in the name of the whole whereupon this Lease shall absolutely cease and determine but without prejudice to any rights or remedies of the Landlord in respect of any antecedent breach of any of the covenants or conditions contained in this Lease

6.2 Abatement of Rent

If the Premises or any part thereof or access thereto or services benefiting the same shall be destroyed or damaged by any of the Insured Risks against which the Landlord covenants to maintain insurance so as to be unfit for occupation and use (and provided that the policy or policies of insurance effected by the Landlord in respect of the Loss of Rent and/or the cost of reinstatement shall not have been voided) the Yearly Rent (or a fair proportion thereof according to the nature and extent of the damage sustained) shall be suspended from the date of the damage or destruction until the Premises shall have again been rendered fit for occupation and use and in the event of there being some disagreement as to the proportion or period of such abatement the same shall be referred to arbitration as hereinafter provided

6.3 Determination

If (save where any policy or policies of insurance effected by the Landlord in respect of the cost of reinstatement shall have been voided) the Premises or any part thereof or access thereto or services benefiting the same shall be destroyed or damaged by any of the Insured Risks against which the Landlord covenants to maintain insurance so as to be unfit for occupation and use and the same shall not have been rendered fit for occupation and use within five years thereafter then (without prejudice to all other rights then available to the parties) either the Landlord or the Tenant shall be entitled by notice in writing served upon the other of them at any time thereafter (but before the Premises shall have again been rendered fit for occupation and use) to determine this Lease absolutely

6.4 No implied easements

6.4.1 The operation of Section 62 of the Law of Property Act 1925 and the rule in *Wheeldon v. Burrows* shall be excluded from this Lease and the only rights granted to the Tenant are those expressly set out in this Lease

6.4.2 Neither the granting of this Lease nor anything contained in this Lease shall by implication of law or otherwise operate or be deemed to confer upon the Tenant (nor shall the Tenant during the Term acquire or become entitled by any means whatsoever to) any easement right or privilege whatsoever from over against or affecting any other land or premises now or at any time hereafter belonging to the Landlord and not comprised in this Lease or any adjoining or neighbouring premises

6.5 Rights of light and air

Any light or air at any time enjoyed shall be deemed to be enjoyed by consent and not as of right

6.6 No restrictions on adjoining property

Neither the granting of this Lease nor anything contained in this Lease or implied shall:

6.6.1 impose or be deemed to impose any restriction on the use of any land or building not comprised in this Lease or give the Tenant the benefit of or the right to enforce or to have enforced or to prevent the release or modification of any covenant agreement or condition entered into by any purchaser from or by any lessee or occupier of the Landlord in respect of property not comprised in this Lease or

6.6.2 prevent or restrict in any way the development of any land not comprised in this Lease and the Landlord shall have the right at any time to make such alterations to or to pull down and rebuild or redevelop any adjoining or neighbouring premises or to permit the same as it may deem fit without obtaining any consent from or making any compensation to the Tenant Provided always that the

provisions of this Clause 6.6.2 shall not substantially interfere with the quiet enjoyment and full beneficial use of the Premises by the Tenant

6.7 Acceptance of rent

6.7.1 No demand for or acceptance of or receipt of the Rents or the grant of any licence or approval or the registration of any document by the Landlord after knowledge or notice received by the Landlord or its agents of any breach of any of the Tenant's covenants hereunder shall be or operate as a waiver wholly or partially of any such breach but any such breach shall for all purposes of this Lease be a continuing breach of covenant so long as such breach shall be subsisting and no person taking any estate or interest under the Tenant shall be entitled to set up any such demand or acceptance of or receipt for the Rents by the Landlord as a defence in any action or proceeding by the Landlord

6.7.2 If the Landlord shall properly and reasonably refrain from demanding or accepting the Rents or any other monies due under this Lease in circumstances in which the Landlord has reasonable grounds to believe either that the Tenant is in breach of any of the provisions of this Lease or that the Tenant might acquire against the Landlord any rights or entitlement then notwithstanding such restraint interest at the Prescribed Rate shall be payable as specified in Clause 3.2 from the due date until the Landlord shall accept the Rents from the Tenant

6.8 Arbitration

Any dispute or difference arising between the Landlord and the Tenant for the settlement of which provision is made in this Lease for arbitration (save where otherwise provided for) shall be referred to the decision of a sole arbitrator to be agreed upon by the Landlord and by the Tenant or in default of agreement to an arbitrator to be appointed at the written request of either the Landlord or the Tenant by or on behalf of the then President of the Royal Institution of Chartered Surveyors (or his nominee) such arbitrator to act in accordance with the Arbitration Act 1996 and his fees shall be within his award

6.9 No compensation

Except where any Act of Parliament prohibits or modifies the right to compensation being excluded or reduced by agreement neither the Tenant nor any undertenant (whether immediate or derivative) shall be entitled on quitting the Premises or any part thereof to claim any compensation from the Landlord under the 1954 Act or any other Act of Parliament whether enacted before or after the date of this Lease

6.10 Notices

The provisions of Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to the giving and service of all notices and documents under or in connection with this Lease except that Section 196 shall be deemed to be amended so that the final words of Section 196(4) "... and that service... be delivered" shall be deleted and there shall be substituted: "... and that service shall be deemed to be made on the third Working

Day after the registered letter has been posted. "Working Day" meaning any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory bank holiday in England"

6.11 Representation

The Tenant acknowledges that this Lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Landlord except any such statement or representation that is expressly set out in this Lease

6.12 Effect on waiver

Each of the Tenant's covenants shall remain in force notwithstanding the Landlord may have waived or temporarily released that covenant or waived or released a similar covenant or condition entered into by any tenant of any adjoining or neighbouring premises

6.13 Release on Assignment of Reversion

The Landlord shall automatically be released from all liability under the covenants and conditions on the part of the Landlord contained in this Lease upon the assignment or transfer of its reversionary interest in the Premises and at the Landlord's request at any time after such assignment or transfer the Tenant shall enter into a deed in such form as the Landlord may reasonably require and supply to evidence such release

6.14 Severance

6.14.1 Any provision in this Lease which is void pursuant to Section 25 of the 1995 Act shall be severed from all remaining provisions and such remaining provisions shall be preserved

6.14.2 To the extent that any provision in this Lease extends beyond the limitations set by the said Section 25 but if it did not so extend it would remain unaffected by the said Section 25 the provisions shall be deemed to be varied so as not to extend beyond the said limitations

6.15 Due dates

In the event of the Landlord (at the request of the Tenant) granting any written concession as a result of which the Tenant is entitled to defer the payment of any monies due then for all purposes in connection with this Lease (and in particular in relation to Section 17 of the 1995 Act) such monies shall be deemed to fall due on the subsequent date agreed between the Landlord and Tenant pursuant to the concession in lieu of the earlier date

7 RENT INCREASE

The amount of the Yearly Rent is to be increased on each anniversary of the Term Commencement Date to the amount set out in Schedule 2

8 TENANT'S RIGHT OF FIRST REFUSAL

- 8.1 In the event that the Landlord shall at any time during the Contractual Term following the expiry of the first five years thereof wish to sell the Premises then the Landlord shall firstly offer in writing to sell the same to the Tenant ("the Offer")
- 8.2 For the purposes of this clause 8 "sell" shall mean the sale of the freehold of the Premises or the grant of a lease thereof for a term in reversion to this term in consideration of the payment of a premium
- 8.3 The Offer shall contain such particularity as to the terms upon which the Landlord is prepared to sell the Property which would be sufficient to satisfy the requirements of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (and shall specifically include the then current edition of the conditions of sale applicable to the sale of commercial premises recommended by the Law Society or the equivalent thereof)
- 8.4.1 The tenant shall be entitled within 21 days of service of the Offer by notice in writing served upon the Landlord ("the Counter-notice") to accept or reject the same
- 8.4.2 In the event that the Tenant shall fail to serve a Counter-notice within the aforesaid period of 21 days or shall purport to accept the Offer conditionally then the Tenant shall in either such case be deemed to have rejected the same.
- 8.5 In the event of the Tenant rejecting or being deemed to reject an Offer then the Landlord shall be entitled at any time within six calendar months thereafter to sell the Premises to any other party upon the terms of the Offer free from the effect of this clause 8. Thereafter the Landlord shall not sell the Premises without first undertaking the foregoing procedure
- 8.6 In the event of the Tenant rejecting or being deemed to reject an Offer and the Landlord selling the Premises to another party in accordance with Clause 8.5 then the Tenant will forthwith thereafter at its cost take such action as is required to vacate any entries that the Tenant may hitherto have made against the title of the Landlord to the Premises at H M Land Registry
- 8.7 Without prejudice to the terms of the foregoing the Landlord agrees to afford the Tenant as much notice as possible of any proposals that the Landlord may have from time to time within the first five years of the Term to sell the Premises albeit on the understanding that nothing in this clause 8.7 shall vest in the Tenant any further rights or interests save that to receive information

9 LATENT DEFECTS

- 9.1 For the purposes of this Lease a latent defect shall be construed as a material defect in the construction or design of the physical structure or the substantial plant and machinery presently erected on or in the Premises which are at any time hereafter the direct cause of actual material damage thereto. A latent defect which does not have this effect is to be disregarded for the purposes of this Clause
- 9

- 9.2 In the event that at any time within 10 years from the date hereof (a period in respect of which time is of the essence of these arrangements) any damage shall occur to the Premises by reason of an alleged latent defect then the Tenant may within that period (but not thereafter) so advise the Landlord in writing ("a Notification"). A Notification shall only be of effect for the purposes of this Clause 9.2 if it is accompanied by a written report from a chartered building surveyor fully particularising the damage sustained ("the Damage") and latent defect alleged to be responsible for the same ("the Defect")
- 9.3 The Landlord may within 56 days of receipt of a Notification advise the Tenant in writing ("a Counter-notice") whether or not and/or the extent to which the Landlord accepts or rejects the existence of the Defect and/or the Damage. If the Landlord fails to serve a Counter-notice within such period of 56 days then the Landlord shall be deemed to have served a Counter-notice rejecting the existence of the Defect and the Damage in their entirety
- 9.4 For the purposes of enabling the Landlord to assess a Notification the Tenant shall (without prejudice and in addition to all other rights granted in this Lease to the Landlord) permit the Landlord to have as free as possible access to the Premises with workmen advisers and necessary equipment and to undertake therein such investigations (including intrusive works which the Landlord shall promptly make good) as the Landlord shall deem necessary
- 9.5.1 If the Landlord serves or is deemed to serve a Counter-notice within the contemplation of Clause 9.3 to the effect that the Landlord does not accept the Notification in its entirety then the Tenant shall be entitled within 56 days thereafter to refer the matter to the decision of an independent chartered building surveyor ("the Surveyor") to be appointed (in default of agreement between the parties as to appointment) by the President or next available senior officer of the Royal Institution of Chartered Surveyors ("the Institution") upon the application of the Tenant. The Surveyor shall be an associate or fellow of the Institution with at least 10 years relevant professional experience and shall act and conduct his determination as an arbitrator within the terms of the Arbitration Act 1996. The fees of the Surveyor shall be paid by the Landlord or the Tenant according to his discretion
- 9.5.2 If the Tenant fails to make reference to the Institution as aforesaid within the period of 56 days above referred to then the Tenant shall be deemed to have accepted the Counter-notice
- 9.6 In the event that the existence (in whole or part) of any Defect and/or Damage is established (whether by agreement between the Landlord and the Tenant or pursuant to arbitration according to Clause 9.5) then the Landlord and the Tenant shall thereafter use all reasonable endeavours to agree upon the most cost-effective and efficient (having regard, inter alia, to the desirability of maintaining as far as possible the continuity of the business being carried on by the Tenant from the Premises) costed program of works necessary to make good the Damage ("the Program"). If the Program or any aspect thereof shall not be agreed between the parties within 56 days of the existence of the Defect and/or Damage being established then either the Landlord or the Tenant may refer the matter to arbitration in accordance with Clause 9.5

- 9.7 The Tenant may within 84 days (but not thereafter) of the agreement or determination (by whatever means) of the Program submit the same to an open market competitive tender under the direction of an architect (being a current member of the Royal Institute of British Architects) ("the Architect") appointed in writing for that purpose and the Tenant shall accept whichever tender the Architect advises (having regard to all criteria) is appropriate. The Tenant will thereafter let or procure the letting of a building contract to the successful tenderer and engage all necessary professional parties required to undertake the Program. The Tenant shall procure that the appointed contractor and the Architect and all of the aforesaid professionals shall within 6 calendar months following the commencement of the Program execute and deliver to the Landlord (and any mortgagee(s) of the Landlord that the Landlord may nominate) duties of care deeds of warranties (in the then current market normal forms allowing for at least two assignments) to each of which will be appended certified copies of the building contract or relevant professional appointment (as the case may be) and shall instruct those parties at all times to supply the Landlord upon request with such up-to-date information and documentation with regard to the Program as the Landlord may require
- 9.8 The Tenant shall be responsible for all of the costs incurred in undertaking the Program and as soon as reasonably practical following the completion thereof (being the issue of a final certificate or equivalent pursuant to the building contract applicable thereto) the Tenant shall procure that the Architect shall prepare and issue to the Landlord and the Tenant a comprehensive final certificate as to the total cost thereof (to include all professional fees and other ancillary expenses) which the Tenant shall discharge ("the Cost")
- 9.9 The Landlord shall be entitled to reimburse the Tenant with the Cost (or such part or parts thereof as the Landlord may determine) at any time or times and if and when doing so shall pay interest on the amount so reimbursed at 5% per annum calculated from the date that the same is incurred until reimbursement
- 9.10 In the event of the Tenant being granted a New Lease in accordance with Clause 10 then one-twenty-eighth part of the Cost (which shall exclude VAT) or such part thereof as shall not previously have been reimbursed pursuant to Clause 9.9 together with interest thereon at 5% per annum calculated from the date that the same is incurred until reimbursement shall be deducted from each of the first 28 consecutive quarterly payments of the annual rent payable throughout the term thereof

10 TENANT'S OPTION TO RENEW

- 10.1 If the Tenant (here meaning for the avoidance of doubt the Tenant in whom this Lease is then lawfully vested and no other party) serves notice on the Landlord not more than 12 months or less than 3 months before the expiration of the last day of the Contractual Term ("the Expiration Date") requesting the Landlord to grant to the Tenant a new lease of the Premises THEN provided the Tenant has up to and including the Expiration Date paid to the Landlord the Rents and all other sums due and demanded under this Lease the Landlord will grant and the Tenant will accept a new lease of the Premises ("the New Lease") for a term of 15 years from and including the day immediately following the last day of the Contractual Term ("the New Lease Commencement Date")

10.2 The New Lease shall otherwise be upon the same terms and conditions as are contained in this Lease save that:

10.2.1 this Clause 10 shall provide that in the event of the Tenant subsequently exercising its right to require the grant to it of a further new lease of 15 years upon the expiry of the term thereby granted (in 2043) then this Clause 10 shall be omitted from the further new lease (with intent that the Contractual Term shall not in any circumstances be capable of being extended beyond 55 years from the Term Commencement Date (until 2058))

10.2.2 this clause 10 shall provide that in the event of the Tenant subsequently exercising its right to require the grant to it of a further new lease of 15 years upon the expiry of the term thereby granted (in 2043) then the Yearly Rent firstly payable in respect of the further new lease shall be the product of the Yearly Rent lastly payable pursuant to the New Lease (or such rent that would have been payable but for any abatement pursuant to Clause 6.2) and 1.025 and that the same will thereafter increase at annual intervals on a compounded basis by 2.5% per annum in the same way as the Yearly Rent reserved by the New Lease would hitherto have increased and Schedule 2 to that further new lease shall so provide

10.2.3 save for the effect thereon of the operation of Clause 9.10 the Yearly Rent firstly reserved shall be £7,416,531 and shall thereafter increase at annual intervals on a compounded basis by 2.5% per annum (in the same way as the Yearly Rent is increased from and after the fifth year of the Contractual Term in accordance with the Schedule 2 to this Lease) and Schedule 2 to the New Lease shall so provide

10.2.4 the words "... following the expiry of the first five years thereof ..." shall be deleted from Clause 8.1

10.2.5 Clause 9 shall be excluded

11 THE CHATTELS

The Landlord warrants that it is the absolute unfettered proprietor of all of the Chattels and that there are no impediments of any description to the same being the subject matter of this Lease

12 APPLICABLE LAW

12.1 This Lease shall be governed by English law

12.2 The parties submit to the non-exclusive jurisdiction of the High Court of Justice in England

12.3 The Surety irrevocably appoints Stephenson Harwood of 1 St Paul's Churchyard London EC4M 8SH as its agent for the service of process in England and Wales service upon whom shall be deemed completed whether or not forwarded to or received by the Surety

13 THIRD PARTY RIGHTS

Except as permitted prior to the coming into force of the Contracts (Rights of Third Parties) Act 1999 the parties to this deed do not intend that any of its terms shall be enforceable by any third party

14 AGREEMENT FOR LEASE

This Lease has been completed in accordance with an Agreement dated 22 October 2002 between (1) the Landlord (2) the Tenant and (3) the Surety

IN WITNESS whereof this document has been executed as a Deed and was delivered by the parties the day and year first before written

SCHEDULE 1

(Particulars of the Premises)

All those self-contained hotel and theatre premises presently known as The Bernard Shaw Park Plaza Hotel 100-110 Euston Road London NW1 2AJ as the title to the freehold thereof comprises the whole of the land and premises presently registered under title number NGL20662 as the same is edged red on the plan attached hereto

SCHEDULE 2
(Increased Rents)

Anniversary of the Term Commencement Date	Amount of Rent Firstly reserved to apply from the relevant Anniversary of the Term Commencement Date (£ p.a.)
First	3,150,000.00
Second	4,000,000.00
Third	4,308,000.00
Fourth	4,415,700.00
Fifth	4,526,093.00
Sixth	4,639,245.00
Seventh	4,755,226.00
Eighth	4,874,107.00
Ninth	4,995,960.00
Tenth	5,120,859.00
Eleventh	5,248,880.00
Twelfth	5,380,102.00
Thirteenth	5,514,605.00
Fourteenth	5,652,470.00
Fifteenth	5,793,782.00
Sixteenth	5,938,627.00
Seventeenth	6,087,093.00
Eighteenth	6,239,270.00
Nineteenth	6,395,252.00
Twentieth	6,555,133.00
Twenty-First	6,719,011.00

Twenty-Second	6,886,986.00
Twenty-Third	7,059,161.00
Twenty-Fourth	7,235,640.00

SCHEDULE 3

Part 1

(Rights Granted)

The following rights are granted to the Tenant and all other parties authorised by the Tenant or otherwise entitled to such rights:-

- 1 the right to display such flags, canopies and other signage as is appropriate for an hotel of this style and class;
- 2 the free and uninterrupted access along all passageways serving the Premises including, for the avoidance of doubt, Weir's Passage;
- 3 the right to erect such aerials and other telecommunications equipment on the roof of the Premises as may be necessary for the carrying out of the Tenant's business at the Premises

Part 2

(Rights Reserved)

The following rights are reserved to the Landlord and all other persons authorised by the Landlord or otherwise entitled to such rights:

- 1 The right to enter upon the Premises for all or any of the purposes mentioned in this Lease
- 2 The free and uninterrupted passage and running of water soil gas electricity and other services from and to all adjoining or neighbouring premises through and along all the Conduits which are now or may during the Term be in on over or under the Premises and the right to relay move maintain and make connections with any of the Conduits and to lay move and maintain new Conduits PROVIDED that the persons exercising such rights shall cause as little disturbance and damage as reasonably practicable and shall make good all physical damage to the Premises occasioned by the exercise of this right
- 3 All rights of light or air now subsisting or which might (but for this reservation) be acquired over any adjoining or neighbouring premises
- 4 Full rights of support shelter and protection from the elements either now or intended to be enjoyed in connection with adjoining buildings or structures erected or to be erected adjoining over or under the Premises
- 5 The right to demolish build alter and add to and thereafter to maintain buildings structures and fixtures upon into or projecting over or under or taking support from the Premises provided that such buildings structures and fixtures shall not become nor form part of the Premises
- 6 The mines and minerals under and the airspace surrounding the Premises
- 7 All other easements or other rights in the nature of easements now enjoyed by any adjoining or neighbouring premises

Part 3

(Matters to which this Lease is subject)

- 1 The matters mentioned in the Property and Charges Registers of Title Number NGL20662 as at 18th September 2002 (save for Entries 5 and 6 in the Charges Register)
- 2 An agreement of 2002 between (1) The Landlord and (2) Vodafone Limited pertaining the installation of telecommunications apparatus at the Premises

Part 4

(Inferior Lease)

Date	Description	Parties
05.05.1971	Electricity Sub-Station	(1) Epic Commercial Properties Limited (2) The London Electricity Board

SCHEDULE 4

(Surety's Covenants)

THE SURETY in consideration of this Lease having been granted at the request of the Surety by way of full indemnity covenants with the Landlord:

1 GUARANTEE OF TENANT'S PERFORMANCE

That for the period during which the Tenant is bound by the tenant's covenants of this Lease the Tenant will pay the rents and other sums payable hereunder on the days and in manner aforesaid and will duly perform and observe all the Tenant's covenants in this Lease and that in case of default the Surety will pay and make good to the Landlord on demand all loss damages costs and expenses thereby arising or incurred by the Landlord

2 FURTHER LEASE ON FORFEITURE OR DISCLAIMER

If this Lease is forfeited or disclaimed under any statutory or other power to take from the Landlord if so required by notice to the Surety within three months after such forfeiture or within three months after the Landlord shall receive written notice of such disclaimer a new lease of the Premises for the residue of the Term unexpired at the date of such forfeiture or disclaimer and at the Rents then payable and subject to the terms of this Lease in every respect and to execute and deliver to the Landlord a counterpart thereof and pay to the Landlord the costs thereof

3 TO MAKE PAYMENTS FOLLOWING FORFEITURE OR DISCLAIMER

If this Lease shall be forfeited or disclaimed and for any reason the Landlord does not require the Surety to accept a new lease of the Premises in accordance with the preceding paragraph 2 the Surety shall pay to the Landlord on demand an amount equal to the rents hereby reserved for the period commencing upon the date of such forfeiture or disclaimer and ending on whichever is the earlier of the following: (a) the date six months after such forfeiture or disclaimer and (b) the date (if any) upon which the Premises are re-let

4 DISCHARGE

The Surety shall as between the Surety and the Landlord and without affecting the Tenant's obligations be liable as sole principal debtor as a primary and separate obligation and not merely as surety or guarantor and without prejudice to the generality of the foregoing shall not be discharged from liability under this Lease notwithstanding:

- 4.1 Any time indulgence concession or waiver granted by the Landlord to the Tenant or any neglect or forbearance of the Landlord in enforcing the payment of the rents hereby reserved or the observance or performance of the covenants or other terms of this Lease
- 4.2 Any refusal by the Landlord to accept rents tendered by or on behalf of the Tenant at a time when the Landlord was entitled (or would after the service of a notice have been entitled) to re-enter the Premises
- 4.3 The transfer of the Landlord's reversion or the release of any other surety
- 4.4 (Save to the extent required by section 25 of the 1995 Act) the assignment of the Lease

- 4.5 That the terms of this Lease may have been varied by agreement between the Landlord and Tenant for the time being
- 4.6 That the Tenant shall have surrendered part of the Premises in which event the liability of the Surety under this Lease shall continue in respect of the part of the Premises not so surrendered after the making of any necessary apportionments
- 4.7 The dissolution amalgamation reconstruction or reorganisation of the Tenant or other change in its constitution structure or powers
- 4.8 The illegality invalidity or unenforceability of or any defect in any provision of this Lease or any of the Tenant's obligations under it
- 4.9 Any other act or thing by which but for this provision the Surety would have been released

5 SECURITY

So long as any sum is or may be owed by the Tenant under this Lease or it is under any obligation hereunder any right of the Surety by reason of performance of any of its obligations under this Lease to be indemnified by the Tenant or to take the benefit of or to enforce any security or other guarantee or indemnity will be exercised and enforced by the Surety only in such manner and on such terms as the Landlord may require or approve

6 AVOIDANCE

If any payment received by the Landlord pursuant to the provisions of this Lease is on the subsequent bankruptcy or insolvency of the Tenant avoided under any laws relating to bankruptcy or insolvency such payment shall not be considered as having discharged or diminished the liability of the Surety and this guarantee will continue to apply as if such payment had at all times remained owing by the Tenant

7 ADDITIONAL OBLIGATIONS

The Surety's obligations under this Lease are and will remain in full force and effect by way of continuing security until no sum remains payable under this Lease and the Tenant has satisfied and performed all its obligations under this Lease so that the obligations of the Surety are additional to and not in substitution for any security or other guarantee or indemnity at any time existing in favour of any person whether from the Surety or otherwise

8 WAIVER

The Surety waives any right it may have of first requiring the Landlord to proceed against or enforce any other rights or security or claim payment from the Tenant or any other person before claiming from the Surety under this Lease

9 TRANSFER OF REVERSION

The Surety agrees that the benefit of the Surety's covenants contained in this Lease shall pass automatically to the Landlord's successors in title without the need for express assignment and without any consent being given by the Surety

SCHEDULE 5

(Authorised Guarantee Agreement)

THIS AGREEMENT is made the day of 20**

PARTIES

- (1) [LIMITED] [PLC] (the "Landlord") [whose registered office is at]
[] [and]
- (2) [LIMITED] [PLC] (the "Tenant") [whose registered office is at]
[]

RECITALS:

- 1 This Deed is supplemental to a Lease (the "Lease") dated the day of 2003 and made between (1) Euston Road Hotel Limited (2) Accor UK Business and Leisure Hotels Limited and (3) Accor S.A. of the premises more particularly therein described being the Shaw Park Plaza Hotel 100-110 Euston Road London NW1 2AJ
- 2 This Deed is entered into pursuant to Section 16 of the Landlord and Tenant (Covenants) Act 1995

OPERATIVE PROVISIONS as follows:

- 1 In this Deed the following expressions shall have the following meanings:
- 1.1 "Assignee" means []
- 1.2 "Assignment" means the assignment to the Assignee authorised by the Licence to Assign
- 1.3 "Landlord" includes (save where provided to the contrary) his her its or their respective successors in title and assigns and where two or more persons are included therein shall also include (as the case may be) the survivor or the survivors of those persons and shall also include the personal representatives of a sole individual or last surviving individual Landlord
- 1.4 "Licence to Assign" means the consent for the Assignment referred to in clause 3.19 of the Lease
- 2 The Tenant hereby irrevocably and unconditionally ***guarantees*** to the Landlord as a continuing guarantee the payment when due of all sums due owing or outstanding from the Assignee to the Landlord under the Lease and the due performance by the Assignee of the covenants on the part of the Tenant under the Lease and agrees to indemnify the Landlord from and against all losses damages costs and expenses which the Landlord may suffer through or arising from any failure by the Assignee to perform any of the covenants on the part of the tenant under the Lease or any failure by the Assignee duly fully and punctually to pay any such sum or any other sum required to be paid by it in relation to or otherwise to perform its said obligations

- 3 The Tenant **HEREBY FURTHER COVENANTS** irrevocably and unconditionally with the Landlord that if the Lease is disclaimed the Tenant will (if required by the Landlord within six months of the Landlord learning of such disclaimer) accept from and execute and deliver to the Landlord a counterpart of a new lease of the Property for a term commencing on the date of such disclaimer and continuing for the residue then remaining unexpired of the Term the Tenant to be responsible for the proper and reasonable costs of both parties in connection with such new lease (together with any Value Added Tax payable thereon) and to reserve the same rents and other sums as are then reserved and made payable by the Lease and to be subject to the same covenants conditions and provisions (including the provisions for the review of rent at the times and in the manner contained in the Lease) as are contained in the Lease
- 4 All sums payable hereunder by the Tenant shall be paid immediately on written demand to the Landlord in full without any deduction withholding counterclaim or set off
- 5 Without prejudice to the Landlord's rights against the Assignee as between the Landlord and the Tenant the Tenant shall be liable hereunder as if it were solely and principally liable and not merely a surety and its liability hereunder shall not be released discharged or diminished by:
- 5.1 any legal limitation lack of capacity or authorisation or defect in the actions of the Assignee in relation to any invalidity or unenforceability of any of the terms of the Lease the bankruptcy insolvency or liquidation (or in the case of an individual Assignee death or in the case of a corporate Assignee the Assignee ceasing to exist) of the Assignee or any change in the Assignee's identity constitution status or control; or
 - 5.2 any forbearance neglect or delay in seeking performance of the obligations of the Assignee or any granting of time indulgence or other relief to the Assignee in relation to such performance; or
 - 5.3 any other act or omission fact or circumstance which might otherwise release discharge or diminish the liability of a guarantor (but subject to section 17 of the Landlord & Tenant (Covenants) Act 1995)
- 6 This guarantee is given to the Landlord by the Tenant under seal and shall enure for the avoidance of doubt not merely for the benefit of the Landlord but for the benefit of any successor in title (however such title devolves) of the Landlord

PROVIDED ALWAYS THAT nothing in this Deed shall impose on the Tenant any liability restriction or other requirement (of whatever nature) in relation to any time after the date on which the Assignee shall have lawfully assigned this Lease

IN WITNESS whereof this document has been executed as a deed and delivered by the parties hereto the day and year first above written

EXECUTED as a DEED by)
EUSTON ROAD HOTEL LIMITED)
acting by :

Director

Director

HOTEL MANAGEMENT AGREEMENT

This HOTEL MANAGEMENT AGREEMENT ("**Agreement**") is made and entered into as of the date specified in **Exhibit A** attached hereto, by and between the parties identified in **Exhibit A** as "**Operator**", "**Leasee**" and "**Owner**" respectively.

RECITALS OF FACT

- (A) Golden Wall Investment Ltd. has the exclusive rights and license to use and exercise all rights vested in and derived from the trade name and trade mark known as Park Plaza (the "**Mark**"), all as specified in and pursuant to a certain Territory License Agreement dated 30 September 2002 by and among Park Global Holding, Inc., on the first part, and Golden Wall Investment Ltd., on the second part (the "**2002 TLA**"); and
- (B) As of January 2003, Golden Wall Investment Ltd. granted Operator an exclusive sub-license to use the Mark in the Territory, which includes *inter alia* England, pursuant to which Operator has full right to manage and market hotels under the Park Plaza Worldwide Hotel Management and Franchise System (the "**System**"), which System includes the right to use the name "Park Plaza" and the trademarks associated with such name, to use the System's international marketing and reservation facilities, and to draw upon the technical assistance, training, and management resources of Park Plaza Worldwide Hotel Group; and
- (C) Owner is the owner of the real property located at and described in **Exhibit B** attached hereto (the "**Property**") upon which there is constructed an hotel described in **Exhibit B** (the "**Hotel**"); and
- (D) Owner has leased the Property and Hotel to the Leasee; and
- (E) Operator's has extensive know-how, experience and expertise in the management and operation of 4 & 5 stars class hotels, and has available to it qualified personnel to render hotel management and operation services.
- (F) Leasee wishes to engage the services of Operator for the management, operation and marketing of the Hotel ("**Services**").

NOW, THEREFORE, incorporating the above recitals as though fully set forth, and in consideration of the mutual covenants, promises, and obligations set forth below, the parties hereto agree as follows:

ARTICLE I : THE HOTEL

1. The Hotel

- 1.1. The word "**Hotel**" will be used in this Agreement to refer collectively to the following :
- 1.1.1. the Property comprising the site of the Hotel, as more particularly described in **Exhibit B**;
 - 1.1.2. all of the Hotel buildings and all related installations and building systems and facilities as more particularly described in Exhibit B;
 - 1.1.3. the "**Operating Equipment**" of the hotel, consisting of all tools, uniforms, china, glassware, linen, silverware, and other similar items used in connection with the operation of the Hotel, dining room accessories, kitchen utensils, engineering tools and equipment, housekeeping utensils and miscellaneous equipment and accessories;
 - 1.1.4. the "**Operating Supplies**" of the Hotel, consisting of all immediately consumable items used in connection with the operation of the Hotel such as food and beverages, cleaning materials, matches, stationery, and other similar items;
 - 1.1.5. the "**FF&E**" of the Hotel, consisting of all furniture and furnishings, fixtures, and equipment used in connection with the operation of the Hotel (but excluding the Operating Equipment and the Operating Supplies), including : (a) any items contained within the walls and ceilings of the structure (which are deemed to be part of the Hotel building); (b) all furniture and furnishings, which shall include guest room, office, public area, and other furniture, carpeting, draperies, lamps and other items; (c) kitchen and valet shop equipment; (d) all equipment required for the operation of guest rooms (including television, mini-bars and safes), banquet rooms, employee locker rooms, and a health club (where relevant); (e) office equipment, including computer hardware and software as selected by Operator;

(f) dining room wagons; (g) material handling equipment; (h) cleaning and engineering equipment;

2. Title to Hotel:

- 2.1. Owner agrees that, subject to the provisions of Paragraph 2.3 below, it now has and will hold for the Term of this Agreement, full title to the Hotel.
- 2.2. Lessee will, at its expense, make all reasonable efforts, including litigation if necessary, to enable Operator to peaceably perform its management, consulting and marketing services consistent with the terms of this Agreement.
- 2.3. Nothing in this Paragraph 2 contained shall be deemed to derogate from or restrict the free and unfettered rights of Owner :
 - 2.3.1. to sell, transfer or otherwise dispose of its rights and interests in and to the Property and/or the Hotel, subject to Operator's rights as specified in Paragraph 50.3 below; and
 - 2.3.2. To charge, mortgage or otherwise encumber its rights and interests in and to the Property and/or the Hotel (in addition to those which are recorded and registered in favor of any party as at the date hereof and of which Operator has been made aware), provided that any such liens, encumbrances, exceptions, covenants, and charges do not materially or adversely affect the operation of the Hotel and/or Operator's rights and/or the ability of Operator to reasonably fulfill its obligations under this Agreement.

<p style="text-align: center;">ARTICLE II</p> <p style="text-align: center;">TERM OF THE AGREEMENT</p>
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3. **Term of the Agreement**

Initial Term

- 3.1. The "**Initial Term**" of this Agreement will commence on October 1st, 2004 (hereinafter referred to as the "**Commencement Date**") and will continue uninterrupted until midnight on December 31st, 2019.
- 3.2. Each contract year in terms of this Agreement shall be a calendar year commencing on January 1st and expiring on December 31st of that year. The first contract year in terms of this Agreement commenced on October 1st 2004 and expire on December 31st 2004.

Extended Term

- 3.3. The Term of this Agreement shall be automatically extended for a further period of 10 (ten) years commencing on January 1st 2020 and terminating on December 31st 2030 (hereinafter "**the Extended Term**"), unless either party shall serve notice on the other party that it does not intend to renew the term of this Agreement for the Extended Term. Such notice shall be furnished in writing by not later than January 1st 2019.

Usage of "Term"

- 3.4. Subject to the provisions of Paragraph 3.3 above, the expression "the Term" wheresoever used in this Agreement shall be deemed to apply to both the Initial Term and the Extended Term, *mutatis mutandis*.

Reservation of Rights

- 3.5. Nothing in this Paragraph 3 contained shall be deemed to derogate from the rights of either party to terminate this

Agreement in accordance with the provisions of Article XIII below.

<p style="text-align: center;">ARTICLE III</p> <p style="text-align: center;">USE AND OPERATION OF THE HOTEL</p>
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4. **Appointment of Operator:**

- 4.1. Lessee hereby engages Operator for the Initial Term as its exclusive agent for purposes of the management and operation of the Hotel, and for purposes of directing and managing all advertising, promotion, marketing, sales, and reservations for the Hotel, all in accordance with the System.
- 4.2. In the event that the Term of this Agreement is extended to include the Extended Term in accordance with the provisions of Paragraph 3.3 above, then and in such event the appointment of the Operator in terms of Paragraph 4.1 above shall apply equally to the Extended Term.
- 4.3. Operator will have for the purpose of performing its duties under this Agreement and within the limits of this Agreement the right and the duty to manage, supervise, direct, and control Lessee's employees, agents, suppliers, contractors and all operations of and relating to the Hotel, the management thereof and its promotion, marketing, and reservations, and will have full control and discretion with respect to all the aforesaid, all within the scope of this agreement.
- 4.4. For the avoidance of doubt, it is hereby clarified that, notwithstanding anything to the contrary stipulated in this agreement, the carrying of the business of the Hotel and the Hotel's operations, including the advertising, promotion, marketing, sales and reservations, shall be performed by Operator by directing, supervising and inspecting the business and operations of the Hotel doing so as agent of Lessee, at Lessee's cost and expense, through the Lessee's employees and with Lessee's resources under the management, supervision, direction and control of the Operator. Whenever using in this agreement the expression "Operator shall operate" or Operator shall

manage” it shall mean doing so in the manner stipulated in this section.

5. **Operator's Services and Authority:**

Operator will provide its Services to the best of its ability and act as necessary to ensure that the Hotel staff uses and operates the Hotel within the System and in conformity with its standards, and in the provision of such services will have, inter alia, the following duties and authorities:

- a. to use all reasonable efforts to maximize patronage of the Hotel's facilities;
- b. to provide corporate marketing, sales, advertising, and if appropriate, group and convention sales, marketing, and reservation services, publicity and public relations, departmental supervision, and other services and facilities customarily offered by Hotels chain operators;
- c. to cause the Hotel staff to use all reasonable efforts to collect all charges, rents, and other amounts due from Hotel guests, patrons, tenants, subtenants, concessionaires, and all others, which efforts shall include, where necessary or desirable, the following -
 - (i) demanding and giving receipts for charges, rents, and other amounts due;
 - (ii) giving notice to quit or surrender space occupied or used by the party in question;
 - (iii) suing for and instituting summary proceedings in the name of Leasee and Owner in connection with any amounts due;
- d. to direct the establishment of a policy regarding association with any credit card system in conformity with Operator's general policy on that subject and to arrange for association with all major credit card systems;
- e. to establish and maintain bank accounts, accounting records, and books as set forth in Article V below;

- f.** to supervise and direct the recruiting, employment, compensation, promotion, supervision, and discharge on Leasee's behalf, of all Hotel employees;
- g.** to cause the appropriate Hotel employees:

 - (i)** to negotiate, on Leasee's behalf and with Leasee's consultation, with any labor union lawfully entitled to represent any Hotel employees;
 - (ii)** to arrange in Leasee's name for utility, telephone, vermin extermination, detective agency protection, trash removal, and other services necessary for the operation of the Hotel;
 - (iii)** to purchase on the credit of Leasee and pay for out of the Hotel's accounts all equipment, all food, beverages, Operating Supplies and expendables, and such other services and merchandise as are necessary or proper for operation of the Hotel and to enter into contracts in the name of Leasee with respect to all goods and services for Hotel;
 - (iv)** to make all purchases and provide for all services, materials, Operating Equipment, FF&E, and provisions all for Leasee's account;
 - (v)** to maintain and repair or provide for the maintenance and repair of the Hotel;
 - (vi)** to grant concessions for services customarily subject to concession in hotels, if desirable in Operator's opinion;
 - (vii)** to determine and set all rates and charges for rooms, food and beverage service, and other facilities at the Hotel;

- (viii) to commence such legal actions or proceedings concerning the Hotel as are necessary or required in the opinion of Operator to advise Leasee of the commencement of any legal action or proceeding concerning the Hotel, and in connection therewith, to retain counsel satisfactory to Leasee;
 - (ix) to settle and compromise claims where appropriate in Operator's opinion, provided that settlement of any claim in excess of US\$50,000 shall be with Leasee's consent.
- h. to periodically make available its personnel for the purpose of--
 - (i) reviewing plans and specifications for any alteration of the Hotel premises,
 - (ii) assisting in the replacement of FF&E, including the design and quantities required,
 - (iii) eliminating in general, operating problems, and
 - (iv) improving operations;
- i. in cooperation with Leasee, to cause all such other things to be done within its reasonable control in and about the Hotel as are necessary to ensure compliance with -
 - (i) all statutes, ordinances, laws, rules, regulations, orders, and requirements of any federal, state, or local government and appropriate departments, and
 - (ii) the orders and requirements of any local board of fire underwriters or any other body which may exercise similar functions; provided that either Operator or Leasee shall have the right to contest by legal proceedings,

until final determination, the validity or application of any such statute, ordinance, law, rule, regulation, order, or requirement to the extent and in the manner provided or permitted by law.

J arrange the insurance policies to be maintained by Leasee pursuant to section 35 below and maintain itself insurance policies to be maintained by Operator pursuant to section 36 below and to comply with the terms of all applicable insurance policies.

K generally, to render any such services as are reasonably to be implied from the scope and nature of the management and operation services to be provided in terms of this Agreement in respect of the Hotel, notwithstanding that same are not specifically mentioned hereinabove.

6. Central and regional Office Services.

Operator shall provide administrative services in support of the Hotel, including general supervision, consultation, planning, monitoring compliance with the sub license agreement, corporate finance, personnel and employee relations, research and development, and the services of Operator's technical, operational and marketing experts making periodic inspections and consultation visits to the Hotel.

Operator shall also provide various marketing services and advertising.

(All the said services shall herein be called "**Central Office Services**").

The Central Office Services shall be rendered to the Hotel together with the other hotels operated by Operator in any respective year by Operators regional and central offices.

All the cost of the performance of the Central Office Services, including all the employment costs of the personnel employed in the performance of the Central Services and all the general and administrative costs to be incurred in connection to the performance

of the Central Services shall, weather incurred by any of the hotels operated by Operator or by Operator, shall be born and defrayed by the hotels operated by Operator so that Operator shall be fully reimbursed for all these costs. Leasee shall bear its pro rata share of such cost as shall be budgeted in the Annual Budget.

Notwithstanding the aforesaid, the cost of employment of the CEO of Operator and maintaining his office shall be born by Operator without reimbursement from the Hotel or the other hotels operated by Operator.

7. Leasee's Obligations

7.1. Leasee will appoint from time to time an individual to act as Leasee's representative, to whom Operator will direct all communications, information, and reports.

7.2. Throughout the Term of this Agreement, Leasee –

7.2.1. will where necessary provide funds in excess of those generated from operations to pay for all items necessary to fully operate and maintain the Hotel and to comply with the terms of this Agreement, including the payment of all mortgage or other indebtedness, taxes, and insurance; and

7.2.2. will provide at all times working capital sufficient to assure the uninterrupted and efficient operation of the Hotel, the amount of which shall not exceed in any event a sum equal to the average expenses to be incurred over the next 3 (three) months, in accordance with the then in effect Approved Budget, as provided in Paragraph 19 below.

8. Standards and Control of Operation.

Standards of Operation.

8.1. Operator shall operate the Hotel under standards required in terms of the System and those comparable to standards prevailing in hotels of the same grading as the Hotel which are operated in accordance with the System and under the Trade Name and for all activities in connection therewith which are customary and usual to such an operation. Operator shall conduct such operations in accordance with the laws of the Territory in which the Hotel is

located and, insofar as feasible and in its opinion advisable, local character and traditions.

Control of Operation.

- 8.2. Subject to the terms and conditions of this Agreement, Leasee hereby grants to Operator: (a) the exclusive and irrevocable right to manage and operate the Hotel for and on behalf of Leasee; and (b) complete control and discretion in the operation and management of the Hotel.

9. Leases and Concessions

- 9.1. Operator shall operate in the Hotel all facilities and provide all services and shall not lease or grant concessions in respect of such services or facilities, except that Operator shall have the right in its own name as agent for and on behalf of Leasee or, if appropriate, in the name of Leasee (who shall execute the necessary documents upon request of Operator), to lease or grant concessions in respect of specified commercial spaces or services within the Hotel that are customarily subject to lease or concession in comparable hotels. The rentals or other payments received by Operator and on behalf of Leasee or by Leasee under each such lease or concession shall be included in the Operating Revenues.

10. Consultations with Leasee.

- 10.1. Within thirty (30) days following :
- 10.1.1. delivery of the Annual Budget by Operator to Leasee in terms of Paragraph 19 below; and/or
 - 10.1.2. Leasee's receipt of the profit and loss and quarterly financial statements for the periods ending March 31, June 30, September 30 and December 31 of each contract year during the Term in accordance with the provisions of Paragraph 20.4.1 below;
- 10.2. Operator shall, at Leasee's request, make available one of its executives to explain and discuss with Leasee the contents of such Annual Plan and/or the said profit and loss statements. Operator undertakes to implement Leasee's opinions and recommendations in that regard.

11. Operator's Right to Contract

- 11.1. In order to carry out its duties under this Agreement, Operator shall have the right, in the name of Leasee or in its own name as agent for and on behalf of Leasee to incur expenses and to enter into contracts with third parties in the ordinary course of business of the Hotel, which contracts shall include, without limitation, contracts for sales of rooms, food and beverages and other facilities of the Hotel; the purchase of food and beverages and Operating Supplies; employment of personnel, advertising and business promotion; repairs and maintenance; administration, heat, light and power; insurance, legal and accounting services; and other goods and services. Pursuant to Paragraph 25 below, all amounts due and payable to the suppliers of goods and services in accordance with the terms of such contracts shall be paid from the Operating Account.
- 11.2. Notwithstanding the foregoing, Operator shall not enter into any contract on behalf of Leasee that does not, by its terms, terminate simultaneously with or prior to the expiration or earlier termination of this Agreement.
- 11.3. Operator shall consult with Leasee with respect to suppliers for goods and services required in the ordinary course of business of the Hotel and shall consider in good faith Leasee's recommendations.

12. Agency Relationship.

- 12.1. In the performance of its duties as manager and operator of the Hotel, Operator shall act solely as agent for and on behalf of Leasee. Operator and Leasee are not to be regarded as joint venture partners.

During the Term and the Extended Term, if applicable, the Operator shall be deemed to have granted the Leasee a sub-license for the right to use the Trade Name, designations and other distinctive trademarks of the System as detailed below in Article XII below.

13. Employees of the Hotel.

- 13.1. Each employee of the Hotel, including the General Manager, shall be the employee of Leasee and/or of Leasee's personnel management company, but not of Operator. Operator shall not be liable to such employees for their wages or compensation, and

every person performing services on behalf of the Hotel in connection with this Agreement shall be acting on behalf of Leasee. On Leasee's behalf, Operator will recruit, hire, train, reassign, and discharge the Hotel staff. Leasee, with Operator's assistance, will comply with all applicable laws and regulations concerning employment of the Hotel employees.

14. The General Manager.

14.1. The parties understand that Operator shall have the right to nominate the General Manager of the Hotel, subject to Leasee's rights of approval in terms of Paragraph 14.3 below. The General Manager to be employed by Leasee and/or by Leasee's personnel company, and shall :

- 14.1.1. be familiar with Operator's method of hotel operation;
- 14.1.2. be furnished with Operator's policies and systems and procedures manuals from time to time in effect; and
- 14.1.3. have his major activities reviewed and supervised by Operator while he shall retain full autonomy to make day-to-day decisions with respect to such operations.

14.2. To such purpose, Leasee shall grant such power of attorney to said General Manager as shall be required. Any employment contract entered into between Operator, as agent of Leasee and said General Manager shall, by its terms, terminate upon the expiration or earlier termination of this Agreement.

14.3. Leasee shall have the right to approve the appointment of the General Manager, which approval shall not be unreasonably withheld or delayed. Subject to the Operator's approval, which approval shall not be unreasonably withheld or delayed, the Leasee shall also have the right to request that the General Manager be replaced.

15. Operator's Management Manuals.

15.1. The parties understand further that all of Operator's management manuals including, but not limited to, policies and procedures, operations, accounting and training, which are furnished by Operator in connection with its management of the Hotel are and shall be at all times, without further act or action, the exclusive property of Park Global Holdings, Inc., Golden Wall Investments Ltd. and/or Operator, who shall have the right to remove such

management manuals from the Hotel upon the expiration or earlier termination of this Agreement.

16. **Information:**

- 16.1. The Leasee shall be entitled to receive information, clarifications and any pertinent detail at any reasonable time concerning any matter related to this Agreement and/or to the operation and management of the Hotel from the Operator's senior officers. Requests for clarifications shall be transferred to the Operator with a copy to the Hotel Manager, and shall be promptly addressed.

17. **Right of Inspection and Review**

- 17.1. The duly authorized officers, accountants, employees, agents, and attorneys of Leasee shall have the right, upon reasonable notice to the General Manager, to enter upon any part of the Hotel at all reasonable times during the Term for the purpose of examining or inspecting the Hotel or examining or making extracts from the operational books and records, or for any other purpose which Leasee, in its sole discretion, shall deem necessary or advisable.

18. **Financial Responsibility**

- 18.1. All debts, liabilities, obligations, and expenses arising from the business and operation of the Hotel are those of the Leasee and are to be paid by the Leasee. In no event will Operator be required to bear any loss, cost, or expense, or advance any of its funds for the operation or maintenance of the Hotel, save where it has: (a) negligently exceeded the Approved Budget or (b) exceeded the powers and authorities awarded to it in terms hereof. Subject to the preceding provisos, Operator will be entitled to prompt reimbursement of any sums actually advanced by it, together with interest as provided for in Article X below.

19. **Annual Budget**

- 19.1. Thirty (30) days prior to the commencement of each contract year, Operator will submit to Leasee for its approval an annual budget in a form reasonably acceptable to Leasee (the "**Annual Budget**"). The Annual Budget will be in the form attached as **Exhibit F**.
- 19.2. If Leasee shall disapprove of the proposed Annual Budget presented by Operator or any part of it, then Leasee shall specify the reasons for its disapproval and Operator shall, after consultation with Leasee submit to Leasee an amended proposed budget or part thereof within 14 (fourteen) days, in form and content which are satisfactory to Leasee. The foregoing procedure

shall be followed until the Annual Budget is fully approved by Leasee or until such time as any of the Parties will chose to refer the differences with Leasee to an Umpire (“**Umpire**”) to be agreed between the parties. If the parties shall fail to appoint the Umpire within 21 days from notice of either of them requesting the appointment, the Umpire shall be appointed by whoever at that time shall act as the chairman of the Carlson Group. Until such time as the new proposed Annual Budget is approved by the Leasee, the portion approved, if any, shall become effective and the Annual Budget of the previous contract year, adjusted to reflect changes, if any, in the room occupancy of the Hotel compar to the room occupancy in the previous contract year, shall remain in effect until the approval of the proposed Annual Budget by the Leasee.

- 19.3. As to projected revenues and operating expenses, Operator will use its best efforts to cause the Hotel to perform financially in accordance with the Annual Budget; however, Leasee acknowledges that the Annual Budget consists of projections and assumptions which are in large measure beyond the control of the Hotel employees and Operator.
- 19.4. Notwithstanding the above, the Parties shall meet periodically at a time and place designated by the Leasee, for the purpose of reviewing the Hotel’s operation, including profit and loss and quarterly financial statements, Operator’s performance, capital expenditures and for making any revisions to the approved Annual Budget. In such meetings or following such meetings Leasee shall have the right to request that certain actions, which the Leasee will deem necessary in the circumstances, will be undertaken in connection to the Hotel operations.
- 19.5. If at any time during the Initial Term or the Extended Term of this Agreement circumstances shall arise, that in the opinion of Operator may cause material negative deviation of the actual results of the Hotel operations in comparison to the current approved Annual Budget – Operator shall give notice in writing to Leasee of such circumstances. With said notice Operator shall produce to Leasee, for Leasee’s approval, action plan which shall contain Operator’s recommendations on the actions that should be undertaken in the Hotel operations to mitigate the circumstances.
- 19.6. Leasee and Operator will make all efforts to agree on the actions requested by Leasee pursuant to Paragraph 19.4 and/or the action plan proposed by Operator pursuant to Paragraph 19.5 above. If, after consultation, Operator and Leasee shall fail to agree on any

action requested by Leasee pursuant to Paragraph 19.4 above or any action proposed by Operator pursuant to Paragraph 19.5 above, either Leasee or Operator may chose to refer the matter to the Umpire, as provided for in Paragraph 19.2 above, and his decision shall be final and binding.

- 19.7. Default by Operator to perform material action set out in an agreed action plan under Paragraph 19.4 or 19.5 above, and/or in action plan confirmed by the Umpire, which shall not be cured by Operator within 60 days from notice of Leasee requesting such cure shall be deemed a breach which shall constitute event of default which shall grant Leasee right of early termination pursuant to Paragraph 45 below.
- 19.8. Notwithstanding anything to the contrary stipulated in this agreement Operator's authority to incur expenditures on behalf of Leasee relating to any given month shall be limited to 115% of the current approved Annual Budget increased or decreased in the same rate as the occupancy of rooms in the Hotel increased or decreased in comparison to the approved Annual Budget for the respective month.

20. Fiscal Year, Reports and Accounts:

Fiscal Year

- 20.1. The fiscal year of the Hotel shall commence on January 1st and terminate on December 31st of each calendar year throughout the Term of the Agreement.

Books of Account

- 20.2. Operator undertakes to keep and maintain throughout the Term full and adequate books of account and other records reflecting the results of the operation of the Hotel. Such books and records shall be kept in the currency of the Territory on the accrual basis and in all material respects in accordance with the then latest edition of the "Uniform System of Accounts for Hotels", as adopted by the American Hotel and Motel Association, and in accordance with generally accepted accounting principles applicable in the Territory and in accordance with the laws of the Territory. All such books of account shall be the sole property of Leasee.
- 20.3. Immediately on termination or expiration of this Agreement, all books and records relating to the operation of the Hotel will be delivered to Leasee; however, thereafter Operator will have the

right to inspect or make copies of any of these records for its own purposes.

Periodic Reportings

20.4. Operator shall deliver to Leasee :

- 20.4.1. On or prior to the end of each month a profit and loss statement showing the results of the operation of the Hotel for the preceding month and the year to date, and containing computations of the Gross Operating Profit, Operator's Fees and Leasee's Profit Participation. The figures contained in such statement shall be taken from the books of account maintained by Operator. Such statement shall reflect the terms of this agreement and shall be prepared, insofar as feasible, in all material respects in accordance with the then latest edition of the "Uniform System of Accounts for Hotels" referred to hereinabove and in terms of generally accepted accounting principles; and
- 20.4.2. Within: (a) thirty (30) days of each quarter in any contract year (excluding the last quarter); and (b) sixty (60) days after the end of each Contract Year, with the exception of the last Contract Year; Operator shall cause the preparation of a profit and loss and financial statement in respect of the relevant period, certified by an independent public accountant selected by mutual agreement of Operator and Leasee and retained by Operator for and on behalf of Leasee, taken from the books of account of the Hotel and showing the results of the operation of the Hotel during the relevant period, containing a computation of the Gross Operating Profit, Operator's fees and Leasee's Profit Distribution for such period, and with a schedule annexed thereto showing all deposits in and withdrawals from the Replacement Fund made during such period and the balance thereof. The cost of the audit shall be charged to Operating Costs.
- 20.4.3. Within sixty (60) days after the end of the last Contract Year, Leasee shall deliver to Operator a profit and loss and financial statement certified by the aforesaid independent public accountant, showing the results of the operation of the Hotel during such last Contract Year, containing computations of Operating Revenue and Gross Operating Profit and the Operator's Fee payable to Operator for such period.

- 20.4.4. The accountant's opinions and certified statements as aforesaid shall be deemed correct and conclusive for all purposes.
- 20.4.5. All profit and loss statements referred to above shall be in substantially the same form as the illustration attached hereto and marked as **Exhibit C**.

<p style="text-align: center;">ARTICLE IV</p> <p style="text-align: center;">OPERATOR'S FEES AND LEASEE'S</p> <p style="text-align: center;">PROFIT PARTICIPATION</p>
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21. **Operator's Fees**

Operator's Fees

- 21.1. In consideration for the fulfillment of the Operator's of its undertakings and obligations pursuant to the provisions of this Agreement, Operator shall be entitled to receive:
- a. an annual Base Fee (hereinafter, the "**Base Fee**") at the fixed rate of 2% (two per cent) of the Room Revenues (as calculated in accordance with the provisions of Paragraph 22 (the "**Room Revenues**"), and
 - b. an annual Incentive Fee (hereinafter, the "**Incentive Fee**") at the fixed rate of 7% (seven per cent) of the Gross Operating Profit (as calculated in accordance with the provisions of Paragraph 22 below ("**the Gross Operating Profit**").
- The Base Fee and the Incentive Fee shall be referred to hereinafter as the "**Operator's Fee**".
- 21.2. The Base Fee shall be paid in monthly installments on or before the 20th (twentieth) day of each month for the preceding month. The Base Fee shall be paid out of the Operating Account, directly into a bank account designated from time to time by Operator.
- 21.3. The Incentive Fees for each contract year shall be paid by the Leasee on an quarterly basis out of the Operating Account, by no later than the last day of the month following the last month of

the last preceding quarter, directly into a banking account designated from time to time by Operator. The calculation of the Incentive Fee in each quarter shall be made on a "year to-date" basis. Within 30 days from the signing by the auditors of the annual financial statements for any Year the final amount of the Incentive Fee for that year will be calculated. Any deficiency not paid in the quarterly payments relating to that year (excluding amounts set-off as excess paid in previous Year) shall be paid out of the Operating Account, by no later than the 1st day of the subsequent month. Any excess paid in the quarterly payments relating to that year (excluding amounts set-off as excess paid in previous Year) shall be set-off from the next quarterly payment(s) relating to the current year.

Additional Fees

- 21.4. It is hereby specifically declared and understood that the Operator's Fees provided for in this Paragraph 21 shall be in addition to, and shall not derogate from, the franchise fees and expense participations which Operator is entitled to receive in terms of the provisions of Article XII below and **Exhibit D**.

Reimbursement of General Costs

- 21.5. Lessee will reimburse Operator for all reasonable out-of-pocket expenses incurred by Operator in performing its duties under this Agreement, including food, lodging, and travel expenses of Operator's employees. Operator will estimate these costs and include them in the Annual Budget. In the event that any Operator personnel perform duties at the Hotel on a temporary basis until a replacement for the Hotel employee who normally performs those duties can be obtained, then Lessee will reimburse Operator for the total employment cost of such personnel.

22. Gross Operating Profit and Room Revenues.

- 22.1. For the purpose of this Agreement, the term "*Room Revenues*" shall be calculated on the accrual method of accounting and in accordance with the Uniform System of Accounting for Hotels as adopted and modified from time to time by the American Hotel and Motel Association, but excluding sales or similar taxes and gratuities
- 22.2. The term "*Gross Operating Profit*" as used in this Agreement shall mean the amount computed as follows:

- 22.2.1. All Operating Revenues, namely :

- (i) revenues and income of any kind derived directly or indirectly from the operation of the Hotel including “*Room Revenues*”, service charges collected from guests and not distributed to employees and rental or other payments from lessees or concessionaires (but not the gross receipts of such lessees or concessionaires); and
- (ii) the proceeds (after deducting therefrom necessary expenses in connection with the adjustment or collection thereof) of use and occupancy (business interruption) insurance actually received.

22.2.2. From the Operating Revenue shall be deducted the Operating Costs, namely the entire cost and expense of maintaining, conducting and supervising the operation of the Hotel, which shall include, without limiting the generality of the foregoing, the following:

- (i) The cost of all food and beverages and Operating Supplies sold or consumed and the total salaries, wages, provisions for severance payments and other compensation of all employees of the Hotel, including the General Manager, and their social benefits, which shall include, inter-alia, the life, disability and health insurance, for which they may be qualified;
- (ii) The cost of replacements of or additions to Operating Equipment and other operating equipment but not exceeding 4% of Gross Revenue of the Hotel per the respective Fiscal Year;
- (iii) All costs and expenses of any advertising and business promotion for the Hotel specifically provided for in the Annual Budget;
- (iv) The cost of all other goods and services;
- (v) Out-of-pocket expenses incurred by Operator and Lessee and their affiliates for the account of or in connection with the operation and management of the Hotel, including reasonable traveling expenses of employees, executives or

other representatives or consultants of Operator and Leasee and their affiliates, provided that such persons shall be afforded reasonable accommodations, food, beverages, laundry, valet and other such services by and at the Hotel without charge to such persons, Operator or Leasee;

- (vi) All costs and expenses of any personnel training of the Hotel staff;
- (vii) All expenditures made by Operator for maintenance and repairs to keep the Hotel in good operating condition in accordance with Paragraph 30 below;
- (viii) Payments to the Replacement Fund as provided in accordance with Paragraph 31 below for replacements of and additions to the FF&E and the cost in excess of the amount in the Replacement Fund; or depreciation where applicable;
- (ix) The cost of alterations, additions and improvements in accordance with Paragraph 32 below;
- (x) The cost of changes, replacements, additions, or improvements in accordance with Paragraph 33 below to the extent that Operator and Leasee have agreed that such cost will be deducted from Revenue in calculating Gross Operating Profit;
- (xi) Premiums for insurance maintained in accordance with Article VIII below – other than premiums on property insurance, immovables and movables, - (premiums on policies for more than one year to be pro-rated over the period of insurance) and losses incurred on self-insured or uninsured risks;
- (xii) All taxes and public dues, other than income taxes, payable by or assessed with respect to the operation of the Hotel including all real property taxes levied or imposed on the Hotel or its contents, but excluding all other taxes

- levied or imposed against Leasee, such as personal property taxes levied or imposed against Leasee, the Hotel or its contents;
- (xiii) Legal, auditing and other professional fees payable with respect to the operation of the Hotel; and
- (xiv) A reasonable provision for uncollectable accounts receivable.

23. Leasee's Profit Participation

- 23.1. Subject to the provisions hereinafter set forth, and subject always to the retention of working capital sufficient, as mutually agreed by the parties, to assure the uninterrupted and efficient operation of the Hotel, Operator shall during the Term pay to Leasee out of the Operating Account the *“Leasee’s Profit Participation”*, namely the Gross Operating Profit after deduction of Operator's Fees provided for in Paragraph 21 above.
- 23.2. The Leasee’s Profit Participation for each contract year shall be paid out of the Operating Account on a quarterly basis, no later than the last day of the following month, directly into a banking account designated from time to time by Leasee.

24. Interim Payments

- 24.1. Notwithstanding the provisions of Paragraphs 21.3 and 23.2 above, in the event that the Parties so agree, payment of the Operator’s Fee and the Leasee’s Profit Participation may be effected on a quarterly or semi-annual basis in accordance with the Gross Operating Profit calculated in accordance with the relevant interim reports, subject however to the provisions of Paragraph 24.2 below.
- 24.2. In the event that interim payments have been effected as provided for in Paragraph 24.1 above, then and in such event year end adjustments will be carried out on the basis of the Gross Operating Profit for the relevant contract year as reflected in the audited annual financial statements for that year. Such year end adjustments shall be made by not later than a date 14 days after the publication of the annual financial statements. Payments of any shortfalls to, or the reimbursement of any excess payments received by, either party shall be executed within 21 days of the publication of the audited financial statements.

ARTICLE V
ACCOUNTING AND BANK ACCOUNTS

25. Operating Account

- 25.1. Operator shall deposit all and any Operating Revenues, payments and incomes received by it from the operation of the Hotel and/or in connection therewith into the “*Operating Account*” only.
- 25.2. The Operating Account shall be opened, maintained and conducted exclusively by Operator in trust for and as agent of Leasee. In the event that Operator shall in its discretion elect to open more than one Operating Account, the provisions of this Agreement shall apply *mutatis mutandis* thereto in all respects.
- 25.3. Operator shall designate the persons who are authorized signatories for the making of withdrawals from the Operating Account and all other Hotel bank accounts. The Operator's funds shall not be commingled in such accounts and all funds which are deemed by Operator to be in excess of the financial needs of the Hotel, including reasonable reserves, will be transferred to Leasee. Notwithstanding the above, the Leasee shall be entitled, at all times, to designate persons as authorized signatories for the making of withdrawals from the Operating Account and all other Hotel bank accounts, for any purposes other than withdrawals for the purpose of distribution of the Operating Costs of the Hotel or payment of the Operator's Fees.
- 25.4. All Operating Costs without exception shall be disbursed by Operator from the Operating Account which shall include without limitation :
- 25.4.1. disbursements of the entire cost and expense of maintaining, conducting and supervising the operation of the Hotel;
- 25.4.2. capitalized alterations, additions and improvements pursuant to Article VII below; and
- 25.4.3. any other expenditures in accordance with the terms of this agreement shall be made by such employees of the

Hotel whose signatures shall be authorized by resolution of the Board of Directors of Operator and approved by Leasee.

- 25.5. Operator shall be entitled to withdraw from the Operating Account its Operator's Fees in respect of that Contract Year in accordance with the provisions of Paragraph 20 above.
- 25.6. The amount remaining out of the Operating Revenues for any one Contract Year, after the disbursement of all Operating Costs and the payment of all Operator's Fees, shall constitute the Leasee's Profit Participation in respect of that Contract Year.

26. **Provision for Replacement of Operating Equipment:**

Operator and Leasee agree that it is desirable to make provision for replacements of Operating Equipment in each Year. Operator will include in the Annual Budget the estimated total cost of replacing and restocking the Operating Equipment as required during the applicable contract year. During that contract year Operator will cause the Hotel employees to make all replacements of Operating Equipment reasonably deemed by it to be necessary or desirable and all such expenditures will be charged against this account. At the end of each contract year, the account will be increased or reduced to reflect the actual expenditures made for replacement of Operating Equipment.

27. **Reserve for Replacement of and Additions to FF&E and Capital Expenditures**

- 27.1. As a component of the Annual Budget, Operator and Leasee will agree upon an amount to be charged in the following contract year for the creation of a reserve for the replacement of and additions to FF&E and capital expenditures.
- 27.2. Leasee will establish an interest-bearing account in a bank approved by Leasee (the "**Reserve Account**") in the name of the Leasee into which there will be deposited each month the amount established in the Annual Budget for monthly additions to the account ,and Operator will cause expenditures for replacements of and additions to the FF&E and capital expenditures to be made from the Reserve Account. Any proposed expenditure in excess of the amounts set forth in the Annual Budget for such items may only be made with Leasee's consent.
- 27.3. The funds deposited in the Reserve Account shall bear interest, which interest, less any income taxes assessed thereon, shall be

credited to the Replacement Fund referred to in Paragraph 31 below, and accumulated in the Reserve Account or, if the parties so mutually agree, otherwise invested.

28. Final Disposition of Hotel Accounts:

- 28.1. At the termination or expiration of this Agreement, a full final accounting will be made to Leasee and Leasee will be paid all amounts generated by Hotel operations, including the balances in the Hotel's bank accounts, after all sums due Operator under the terms of this Agreement are deducted.

ARTICLE VI

TRANSACTIONS WITH AFFILIATES

29. Transactions with Affiliates

- 29.1. The Operator shall not purchase goods, supplies and services from or through any of its Affiliated Entities without express authorization from Leasee after disclosure of all material terms of the affiliated relationship and the consideration received by them. Unless clearly set forth as a separate item for transactions with Affiliates in the proposed Annual Budget and approved as part of the Annual Budget, Operator shall not pay or permit or cause to be paid to any such Affiliated Entity, a fee, rebate, discount or other consideration for the negotiation of contracts, the purchase from independent suppliers of goods and services or other act pursuant to Operator's agency hereunder, without Leasee's prior written authorization.

ARTICLE VII

REPAIRS, MAINTENANCE, AND ALTERATIONS

30. Normal Repairs and Maintenance.

At Leasees cost and expense, operator will cause the Hotel to be maintained in good order, repair and condition, ordinary wear and tear excepted.

31. Replacements of and Additions to FF&E

- 31.1. The Parties shall make a provision in the Annual Budget for replacements of and additions to FF&E and other capital expenditures. All amounts provided for in the Annual Budget for replacements and additions as aforesaid, together with the proceeds from the sale of FF&E which are no longer needed for the operation of the Hotel, shall be credited to the "*Replacement Fund*", and shall be transferred monthly by Operator from the Operating Account into the Reserve Account.
- 31.2. Operator shall be entitled to withdraw from the Replacement Fund and shall charge against the Reserve Account any amounts required to make all replacements of and additions to FF&E deemed by it to be necessary (except as provided under Paragraph 32 below) or desirable, which FF&E shall be and become, forthwith upon acquisition and installation and without further act or action, the property of Leasee.
- 31.3. Replacements of and additions to FF&E deemed by Operator to be necessary or desirable, the cost of which shall exceed the balance in the Replacement Fund or the amounts held in the Reserve Account for that purpose, shall be subject to the approval of Leasee. In the event that Leasee shall approve such cost items as aforesaid, then and in such event Leasee shall make available to Operator, as additional working capital, the necessary funds therefor, and the cost thereof shall be charged directly to the Operating Costs or shall be capitalized on the books of account in accordance with sound accounting practices. The costs of such replacements and additions that are capitalized shall be depreciated by charges to the Operating Costs over their estimated useful lives.
- 31.4. Any amounts remaining in the Replacement Fund at the termination or expiration of the Operating Term shall be credited to Gross Operating Profit in the last contract year of the Term.

32. Alterations

Operator shall have the right to make, from time to time, such alterations, or improvements in or to the Property, building(s), installations and building systems which are customarily made in the operation of similar hotels of the type herein contemplated. The cost of such alterations, additions or improvements shall be

charged directly to Operating Costs or shall be capitalized on the books of account in accordance with sound accounting practices. The costs of alterations, additions or improvements that are capitalized in excess of 4% of Gross revenue of the Hotel shall not be amortized or depreciated by charges to the Operating Costs.

33. Essential Repairs, Changes, and Replacements.

33.1. If at any time during the Term, repairs to the building(s), installations or building systems, changes in the Hotel, or replacements :

33.1.1. shall be required by reason of any laws, ordinances or regulations, or by any order of governmental authority; or

33.1.2. shall be related to the structural integrity of the Hotel;

such repairs or replacements shall be made by Leasee, shall be paid for by Leasee, at its expense and not as a charge against Operating Costs as aforesaid. Such repairs, replacements and changes shall be made promptly and with as little hindrance to the operation of the Hotel as possible.

34. Consultation With Leasee

34.1. Operator shall consult with Leasee with respect to suppliers of equipment and services required in connection with expenditures incurred pursuant to this Agreement and shall consider in good faith Leasee's recommendations. Leasee shall have the right to approve any individual purchase of materials required in connection with such alterations, additions or improvements where the purchase price exceeds US\$10,000.

<p style="text-align: center;">ARTICLE VIII</p> <p style="text-align: center;">INSURANCE</p>
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35. Insurance to be Maintained by Leasee

35.1. Leasee shall at all times during the Term, procure and maintain adequate insurance :

- 35.1.1. for the full replacement value of the Hotel with financially responsible insurance companies against all risk of physical loss or damage to the Hotel and its contents from, including, but not limited to, fire, boiler explosion, and such other risks and casualties for which insurance is customarily provided for Hotels of similar character; and
- 35.1.2. workmen's compensation, employers' liability or other such insurance as may be required under applicable laws or which Leasee, in consultation with Operator, shall deem advisable.
- 35.2. All policies shall provide that Leasee (and, at Leasee's request, any mortgagee) be named insured parties, and that Operator be named as additional insured parties. The fire and extended coverage policy insuring damage to the building and contents shall provide that the insurance company agrees to waive any rights of subrogation against Operator.

36. Insurance to be Maintained by Operator

- 36.1. Operator shall for and on behalf of Leasee maintain at all times during the Term the following insurance, on usual terms and at customary rates:
 - 36.1.1. Public liability insurance including personal injury/bodily injury, property damage, innkeeper's liability and advertising liability; automobile liability; and crime insurance including employee fidelity in such amounts as Operator shall deem necessary;
 - 36.1.2. Use and occupancy (business interruption) insurance covering loss of profits of Leasee and fees of Operator resulting from loss due to perils covered under standard fire and boiler and machinery policies, and such other perils as Operator deems necessary; and
 - 36.1.3. In its discretion, Operator may maintain such other insurance as it shall deem necessary for protection against claims, liabilities and losses, wherever asserted, determined or incurred, arising from the operation of the Hotel.
- 36.2. Operator shall, upon request, furnish to Leasee satisfactory evidence of all insurance maintained by Operator pursuant to this Paragraph 36.

ARTICLE IX
DAMAGE TO AND DESTRUCTION OF THE HOTEL

37. Damage to and Destruction of the Hotel

- 37.1. If the Hotel or any portion thereof shall be damaged or destroyed at any time or times during the Term by fire or any insured casualty and Leasee repairs, rebuilds or replaces the same, Operator be required and hereby undertakes to continue to operate and manage the rebuilt Hotel under the substantially similar to the terms of this Agreement.

38. Condemnation

- 38.1. If the whole of the Hotel shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such portion thereof shall be taken or condemned so as to make it imprudent or unreasonable, in Leasee's reasonable opinion, to use the remaining portion as a hotel and/or commercial center of the type and class immediately preceding such taking or condemnation, then the Term shall terminate as of the date of such taking or condemnation.
- 38.2. If only a part of the Hotel shall be taken or condemned and if Operator and Leasee mutually determine that the taking or condemnation of such part does not make it unreasonable or imprudent to operate the remainder as a hotel and/or a commercial center of the type and class immediately preceding such taking or condemnation, this Agreement shall not terminate, but shall continue to be implemented *mutatis mutandis* in respect of that portion which remains under operation as aforesaid.

ARTICLE X
RIGHT TO PERFORM COVENANTS
OF THE OTHER PARTY

39. Right to Perform Covenants of the Other Party

- 39.1. If either Operator or Leasee fails to make any payment or perform any act required under this Agreement, the other party may elect to do so after giving ten (10) days written notice. Such notice is not required, however, in the event of an emergency. Any such election will not release the other party from its obligations, and the electing party will not be deemed to have waived any right or remedy.
- 39.2. Any payment made by the electing party will be immediately repaid, together with interest at 150 basis points above the 30-day LIBOR rate ("*Interest*"), but not in excess of the maximum rate allowed by applicable law.

ARTICLE XI
DEFAULT

40. Defaults and Termination

Events of Default.

- 40.1. The following shall constitute events of default:
- 40.1.1. The failure of either party to make any payment to the other provided for herein for a period of thirty (30) calendar days after such payment is payable;
- 40.1.2. The filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by either party;

- 40.1.3. The consent to an involuntary petition in bankruptcy or the failure to vacate within sixty (60) calendar days from the date of entry thereof of any order approving an involuntary petition by either party;
 - 40.1.4. The appointment of a final receiver for all or any substantial portion of the property of either party;
 - 40.1.5. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating either party as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred twenty (120) consecutive calendar days;
 - 40.1.6. The termination, expiry or lapse of the Trade Name License at any time during the Term, or the loss and/or forfeiture by Operator of the rights to use and/or operate under the Trade Name in respect of the Hotel during the Operating Term;
 - 40.1.7. The failure by either party to perform, keep or fulfill any of the other material covenants, undertakings, obligations or conditions set forth in this agreement, and the continuance of any such default for a period of thirty (30) calendar days after notice of said failure.
- 40.2. In any of such events of default, the non-defaulting party may give to the defaulting party notice of intention to terminate this agreement after the expiration of a period of thirty (30) calendar days from the date of such notice, and upon the expiration of such period, this Agreement shall terminate if the default has not been remedied by that date, in which event the provisions of Paragraph 42 below shall apply.
- 40.3. If, however, upon receipt of such notice, the defaulting party shall promptly cure the default, then such notice shall be of no force and effect, or, when such default is not susceptible of being cured within thirty (30) calendar days, if the defaulting party shall take action to cure such default with all due diligence, then the effective date of the termination notice shall be extended for such reasonable time as shall be required for the defaulting party to cure such default.

- 40.4. Notwithstanding the foregoing, neither party shall be deemed to be in default under this agreement if a bona fide dispute with respect to any of the foregoing events of default has arisen between the parties and such dispute has been submitted to arbitration in terms of Paragraph 46 below.

Force Majeure

- 40.5. Except as otherwise provided in this agreement, should either party hereto be delayed in or prevented, in whole or in part, from performing any obligation or condition hereunder with the exception of the payment of money, or from exercising its rights by reason or as a result of any force majeure, such party shall be excused from performing such obligations or conditions while such party is so delayed or prevented. The term "*force majeure*" as used herein means : acts of God, acts of government, strikes, lockouts, or other industrial disturbances, acts of public enemy, blockades, wars, insurrections or riots, epidemics, landslides, fires, storms, floods, explosions, or other similar causes beyond the control of such party and which could not have been reasonably anticipated by that party.

Rights of Prior Termination

- 40.6. Nothing in this Paragraph 40 contained shall be deemed to derogate from or to restrict rights of each party to terminate this Agreement prior to the expiration of the Initial Term or the Extended Term, as the case may be, as provided for in Paragraph Article XIII below.

ARTICLE XII

PROPRIETARY TRADE NAME AND MARKS, SUB-LICENSE

41. License, Sub-License and Proprietary Rights

- 41.1. The Operator affirms, declares, covenants and undertakes that it has duly been awarded, and shall maintain throughout the Term of this Agreement, the exclusive rights under license to operate the Hotel under the names "Park Plaza", "Park Plaza International" and all related trademarks, service marks, and logos (the "*Trade Name*") under the System.

- 41.2. The Operator hereby grants the Leasee a sub-license that shall entitle Leasee to make use of the Trade Name and to make use of the System, subject to the terms, provisions and conditions set forth in **Exhibit D** attached hereto.
- 41.3. Leasee acknowledges the Trade Name trademarks, service marks, copyrights, logos, and other indicia, whether registered or not, are the exclusive property of Park Plaza.
- 41.4. Leasee agrees not to make any use of the name “Park Plaza” or any combination or variation thereof or the Trade Name in any way other than in accordance with the provisions of the Sub-License.

42. Removal Upon Termination/Expiration

- 42.1. Upon any termination or expiration of this Agreement, Leasee will, at its expense, immediately remove and discontinue the use of all signs, furnishings, printed material, emblems, slogans, or other distinguishing characteristics which are now or hereafter connected with the Park Plaza name or the Trade Name. Upon such termination or expiration, Leasee will not operate or do business at the Hotel under any name or in any manner that may tend to give the general public the impression that Leasee or the Hotel are in any way connected with Operator or the System, and Leasee will, at its own expense, immediately make such modifications or alterations as may be necessary to distinguish the Hotel so clearly from its former appearance as to prevent any possible confusion therewith by the public. If Leasee fails to take any of the foregoing actions, Park Plaza, Operator, or their designated agents may enter the Hotel and adjacent areas at any time to take such actions, at Leasee's sole risk and expense, without liability for trespass or other tort or criminal act.

43. Restriction Upon Use

- 43.1. Proper use of the Trade Name pursuant to this Agreement applies only to their use in connection with the operation of the Hotel subject to the terms of this Agreement and the Sub-License, and includes only such Trade Names as are designated herein or as may be designated by Park Plaza and Operator from time to time in writing.
- 43.2. Nothing in this Agreement will ever be construed as giving Leasee any right, title or interest whatsoever in or to the Trade Name or giving Leasee or others permission to use the Trade Name or any colorable imitation thereof in any manner, except in

accordance with this Agreement and the Sub-License or with the prior written approval of Operator.

- 43.3. Lessee will not use any Trade Names as part of Lessee's corporate or other formal business name, except as may result as a consequence of operating the Hotel under the name "Park Plaza International" or "Park Plaza" with Operator's prior written consent. Lessee may include in its corporate and promotional literature references to the fact that the Hotel is operated under the Trade Name, provided that Operator's rights in and to the Trade Name are not thereby jeopardized.
- 43.4. Lessee will not register or attempt to register any of the Trade Name in any state, nation or political subdivision thereof.
- 43.5. The use by Lessee of the Trade Name outside the scope of the Sub-License, without Operator's prior written consent, will be an infringement of Operator's exclusive right, title and interest in and to the Trade Name, and Lessee expressly covenants that during the term of the Sub-License, and after the expiration or termination hereof, Lessee will not, directly or indirectly, commit an act of infringement or contest or aid in contesting the validity or ownership of Park Plaza's Trade Names, or take any other action in degradation thereof.

44. Ownership and Goodwill:

- 44.1. It is expressly recognized that any and all goodwill associated with the Trade Name, including any goodwill which might be deemed to have arisen from use of the Trade Name at the Hotel, inures directly and exclusively to the benefit of Park Plaza and is the property of Park Plaza or of companies affiliated with it. Upon expiration or termination of this Agreement, no monetary value will be assigned as attributable to any goodwill associated with Lessee or the operation of the Hotel arising from the use of the Trade Name.

ARTICLE XIII
TERMINATION

45. Early Termination for Cause

- 45.1. In the event that either party shall have committed an event of default and shall have failed to rectify such breach as provided for in Paragraph 40.2 above, then and in such event the aggrieved party shall be entitled to terminate this Agreement with immediate effect.
- 45.2. The rights granted hereunder shall not be in substitution for, but shall be in addition to any and all rights and remedies for breach of contract granted by applicable provisions of law.

ARTICLE XIV
ARBITRATION

46. Arbitration

- 46.1. Any dispute, controversy, dispute or claim arising out of and/or pertaining to and/or in connection with this Agreement, its interpretation, execution or validity, or the breach and termination hereof, shall be settled by final and binding arbitration in accordance with the Rules of Arbitration of the London Court of International Arbitration (LCIA) in London, England, which rules are deemed to be incorporated by reference into this Paragraph.
- 46.2. The arbitration shall be heard and determined by one arbitrator, who shall be selected by the parties. If within forty-five (45) days following the date upon which a claim is received by the respondent, the parties cannot agree on who the arbitrator is to be, the appointing authority under such Rules shall select the arbitrator.

- 46.3. The place of arbitration shall be London, England (or at such alternative venue to be agreed between the Parties or as determined by the Arbitrator), and the English language shall be used in the arbitral proceedings.
- 46.4. In adjudicating any dispute referred to herein in terms of this Paragraph, the Arbitrator shall not be bound by the rules of evidence, nor by the rules of civil procedure, nor by the terms of the substantive law, but rather shall endeavour to adjudicate the dispute in accordance with the principles of “Natural Justice”. In the event that the Arbitrator shall nevertheless elect to be guided by and/or governed by the provisions of the substantive law, then and in such event the Governing Law determined in **Exhibit A** shall apply. The Arbitrator shall have the powers of an amicable compositeur.
- 46.5. The Arbitrator shall be empowered to issue temporary orders and injunctions, and the Parties undertake to abide by such orders and injunctions pending the making of the final arbitral award.
- 46.6. The Arbitrator shall use his best endeavours to ensure that the Arbitration proceedings are conducted expeditiously and diligently, and that the arbitral award is given as soon as possible. The Arbitrator shall be required to furnish reasons for his decision. The Parties hereby agree and undertake that the arbitral award shall be final and binding upon them, and shall not be subject to further appeal.
- 46.7. The fees and expenses of the Arbitrator and/or of the arbitration proceedings shall be borne by the Parties in equal shares, unless specifically determined to the contrary by the Arbitrator in his award.
- 46.8. The parties hereby declare that the bone fide referral of any dispute to arbitration shall not entitle either of the parties to discontinue the fulfillment of their undertakings and obligations in terms hereof, save in those instances where the dispute relates to the termination of this Agreement.
- 46.9. This Paragraph constitutes a separate agreement to arbitrate which shall survive the termination of this Agreement for any reason.
- 46.10. The award of the arbitrator shall be the sole and exclusive remedy between the parties regarding any and all claims and counterclaims presented to the arbitrator; provided, however, that

the parties may seek court ordered temporary injunctive relief pending the determination of final award under the arbitration.

<p style="text-align: center;">ARTICLE XV</p> <p style="text-align: center;">GENERAL PROVISIONS</p>

47. Taxes and Impositions:

- 47.1. Leasee will pay, prior to delinquency, all real estate taxes and assessments, which may become a lien on the Hotel and which become due and payable during the Term of this Agreement, unless payment is in good faith being contested by Leasee and enforcement of payment has been stayed. If requested, Leasee will provide to Operator documentary evidence of payment.

48. Currency:

- 48.1. All amount to be reimbursed or paid to either party under the terms of this Agreement will be in GBP. At Operator's option, amounts due to it may be paid directly or deposited in a bank account designated in writing by Operator.

49. Notices:

- 49.1. The terms "Notice" and "Notify" mean notice given as prescribed in this Paragraph. Any Notice or other document to be given hereunder may be delivered by courier or sent by prepaid registered air mail or by telex or facsimile to the party to be served at that party's address as set forth in **Exhibit A** or to such other address as the party may subsequently designate by this notice procedure.
- 49.2. Any such Notice or document will be deemed to have been served (i) if delivered by courier, three days after dispatch; or (ii) if posted, seven days after posting; or (iii) if sent by facsimile, upon the date of transmission with confirmation of receipt by the addressee's terminal; or (iv) immediately, if delivered by hand. If a party has a facsimile terminal, Notice must include a facsimile transmission, unless the documents are bulky or otherwise unsuitable for service by fax.

- 49.3. In providing such service it will be sufficient to prove that delivery by courier was made or refused, or that the envelope containing such Notice or document was properly addressed and posted as a prepaid registered letter and was signed for or refused on delivery to the addressee, or that the telex was dispatched after receiving confirmation of the answer back, or that the facsimile was received in legible form.

50. Assignment

Assignment by Operator

- 50.1. Subject to the provisions of Paragraph 50.2 below, Operator shall not be entitled to assign, transfer and make over its rights and interests and its undertakings and obligations in terms of this Agreement to any third party without the prior express written consent of Leasee.
- 50.2. Notwithstanding the provisions of Paragraph 50.1 above, Operator shall be entitled to assign and transfer its rights and obligations in terms hereof to its wholly owned and controlled subsidiary company, provided that the assignor shall remain jointly and severally liable for the fulfillment by the assignee of the undertakings made and obligations assumed by the "Operator" in terms hereof.

Assignment by Leasee

- 50.3. Leasee shall have the right to assign its rights and obligations under this Agreement and/or to sell and transfer its rights and interests in and to the Hotel to any third party without requiring the consent or approval of Operator, provided that such assignment and/or sale shall be made subject to this Agreement. The provisions of this Paragraph shall be in addition to, and shall not derogate from, the rights of Leasee in terms of Paragraph 45 above.

Successors and Assigns

- 50.4. The terms, provisions, covenants, undertakings, agreements, obligations and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the parties, except that no assignment, transfer, pledge, mortgage or lease by or through Operator or by or through Leasee, as the case may be, in violation of the provisions of this Agreement shall vest any rights in the assignee, transferee, mortgagee, pledgee, lessee or in any occupant.

51. Special Provisions

- 51.1. Any special provisions, if any, which have been agreed upon between Leasee and Operator which relate specifically to the Hotel which is the subject matter of this Agreement, are set forth in **Exhibit E** attached hereto.

52. Approvals, Consents, and Other Actions:

- 52.1. Whenever the approval, consent, satisfaction, request, agreement, judgment, determination, or other discretionary action of Operator or Leasee is required or permitted by this Agreement, such discretionary action will be given, taken, or exercised reasonably and in good faith. Any such discretionary action of one party that is requested by the other party will not be withheld unreasonably.
- 52.2. Except where otherwise provided, where approvals or consents by either Leasee or Operator are called for under this Agreement, the procedures set forth below will be followed. All information, documentation or Notices regarding approval or consents requested by one party will be submitted to the other party pursuant to Paragraph 49 above. Where approvals of documents or written materials are requested, the responding party will have thirty (30) days after receipt thereof within which to respond. Where approvals of actions or proposed actions are requested, the responding party will have thirty (30) after receipt of Notice regarding same within which to respond. If no Notice expressing disapproval is given by the responding party to the other party within the designated time period, approval is deemed to have been given.

53. Amendments

- 53.1. The conditions, covenants, agreements, and terms of this Agreement may only be waived, altered, or modified by a writing signed by both parties.

54. Partial Invalidity

- 54.1. If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

55. Headings and Exhibits

- 55.1. The headings or titles used in this Agreement are for the purpose of convenience only and may not be employed in the interpretation or construction of this Agreement
- 55.2. The various Exhibits attached to this Agreement constitute an integral part of this Agreement as if same had been specifically incorporated into the body hereof.

56. Entire Agreement

- 56.1. This Agreement constitutes the entire agreement and understanding between Leasee and Operator on the subject matter hereof and supersedes all prior agreements, written or oral, and all prior writings.

57. Counterparts

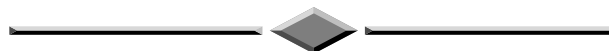
- 57.1. This Agreement may be executed by the parties hereto in counterparts, and when so executed will be given the same force and effect as if one copy was executed by all parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date specified in **Exhibit A**.

For : Leasee	
Name :	_____
Title :	_____

For : Operator	
Name :	_____
Title :	_____



HOTEL MANAGEMENT AGREEMENT

EXHIBIT A


EXECUTION DATE AND IDENTIFICATION OF PARTIES

1. **Date of Execution** This Agreement is executed as of

2. **Operator** Park Plaza Hotels Europe B.V., a company,
organized and existing under the laws of the
Netherlands, whose address for all purposes in
terms of this Agreement is:

Hasselaerssteeg 11
1012 MB Amsterdam
The Netherlands
Tel.: 0031-20-7138206
Fax.: 0031-20-5240651
3. **Leasee** _____ Ltd.

4. **Owner** _____, a company,
organized and existing under the laws of the
Netherlands, whose address for all purposes in
terms of this Agreement is :

5. **The Territory :** England
6. **Governing Law :** The laws of the Netherlands


HOTEL MANAGEMENT AGREEMENT

EXHIBIT B

DESCRIPTION OF THE HOTEL

1. **Hotel Name** _____
2. **Hotel Classification:** Four Star
3. **Common Address of the Hotel and Hotel Site :**

4. **Description of the Real Property which is the Hotel Site:**

5. **Description of the Hotel and All Related Facilities:**

Guest Rooms: (Singles, Jr. Suites, Suites)

11 floors with a total of 462 rooms & suites:

- 396 four-star deluxe guest rooms & suites:

- 301 Superior rooms
- 64 Executive rooms
- 31 Executive suites

- 66 five-star luxurious, self-contained, suites with striking views:

- 10 Studios
- 41 one bedroom suites
- 15 two bedroom suites

Hotel Guest Room Amenities & Features

Air-conditioning, flat screen TVs, direct telephone with 3 extensions, EU/UK/US power sockets, fax & modem points, Wireless Internet, movie & music channels

on demand, laptop safe, mini-bar, hair-dryer, iron & ironing board, tea & coffee making facilities, bath & separate shower as standard

Suites Guest Room Amenities & Features

All facilities as in the hotel rooms plus:

Striking views, self-contained kitchen unit with washer/drier, dishwasher, microwave oven, fridge, high quality coffee machine and Plasma screen with surround sound, Bose CD/DVD player, pillow menu, fax & printer, luxury linen, exclusive bath towels and toiletries.

The suites benefit from all services & facilities offered by the hotel and guests can charge to their room. Other exclusive services available include:

nanny / babysitting service, children's toys, play station, business cards, possibility to book a private chef, dedicated butler service / concierge, relocation assistance and valet parking.

Restaurants:

Concept restaurant (80 seats, located on ground floor)

Lobby bar & lounge (located on ground floor)

Bar (1st floor)

Breakfast club lounge (basement level 1)

Executive lounge (11th floor)

Bars: See above

Banquet Facilities:

13 meetings rooms, including:

- 1 Ballroom accommodating up to 800 Theatre style
- 1 Ballroom accommodating up to 568 Theatre style
-

State-of-the-art audiovisual equipment onsite and a business centre is also available.

Separate entrance for groups & functions.

Other Function Space:

Commercial Space, including Concessions and Shops: 1 retail unit

Parking Facilities: 120 car parking spaces

Recreational Facilities: Fitness centre, indoor swimming pool, spa, sauna, steam room, beauty treatment rooms

Other Details and Information: 120 car parking spaces

HOTEL MANAGEMENT AGREEMENT

EXHIBIT C

FORM OF PROFIT AND LOSS ACCOUNT

Rooms

Revenue

Payroll and related expenses

Other expenses

Departmental income

Food and beverage

Revenue

Food

Beverage

Cost of Sales

Food

Beverage

Other income

Payroll and related expenses

Other expenses

Departmental income

Casino

Revenue

Payroll and related expenses

Other expenses

Departmental income

Telephone departmental income

Net income from minor
operated departments

Rentals and other income

Total Operating Department Income

Undistributed operating expenses

Administrative and general

Payroll and related expenses

Other expenses

Marketing

Energy costs

Property operation and maintenance

Replacements of and additions to

Furnishings and Equipment

Gross Operating Profit

Operator's Fee

Leasee's Profit Participation

HOTEL MANAGEMENT AGREEMENT

EXHIBIT D

SUB-LICENSE AGREEMENT

1. Award of Sub-License

- 1.1 Pursuant to Article XV of the Agreement, the Operator hereby grants the Leasee a sub-license to use the name "Park Plaza" together with the associated logos and certain other services comprising the Park Plaza international System developed by Park Plaza Global Holdings, Inc., as detailed below.
- 1.2 Operator hereby warrants, declares and covenants that pursuant to the provisions of the Territory License Agreement entered into between it and Plaza Global Holdings, Inc. ("*the Principal License*"), it is fully entitled, authorized and empowered to award the Sub-License to Leasee in terms of this Agreement.
- 1.3 The sub-license awarded to the Leasee to make use of the Trade Name and to make use of the hotel operation and management system developed by Park Plaza International ("*the System*") which includes the right to the System's international marketing and reservation system, to receive advertising and promotional materials; to participate in any association of international hotels which may be organized by Park Plaza; to receive advise and assistance in the design, development and enhancement of hotels within the System; to receive training and education of hotel management and key personnel; to be included in the Park Plaza International Directory and to receive manuals and other materials disseminated by Park Plaza.

2. Fees and Assessments

- 2.1 In consideration for the award of the sub-license, it is hereby agreed that Leasee shall pay the Operator a *Franchise Fee* (Monthly Fee) equal to 1% (one per cent) of the Gross Room Revenues, payable on or before the 20th day of each calendar month during the Term.

For the purposes of this Exhibit, the term Gross Room Revenues shall be calculated on the accrual method of accounting and in accordance with the Uniform System of Accounts for Hotels as adopted and modified from time to time by the American Hotel

and Motel Association. Gross Room Revenues shall not include sales or similar taxes, or gratuities.

- 2.2 In Addition, for each calendar month during the Term, Leasee will pay to Operator a Reservation System Users Fee equal to the actual cost pursuant to an outsourcing agreement for the provision of such service.

3. Terms and Conditions of Sub-License

3.1 *Operator's Obligations*

The Operator shall continue to maintain high standards of quality, cleanliness, appearance and service for the Park Plaza System and to promote, protect and enhance the public image and reputation of the System and reputation of the System so as to increase the demand for lodging and other services offered under the System.

The Operator shall undertake to perform or cause others to perform the following :

- (a) Training : In co-operation with the Leasee, offer educational and training courses for Leasee's employees.
- (b) Reservation System : Maintain and make available to all hotels in the System an international reservation system.
- (c) Directory : Publish and make available to all hotels in the System the Park Plaza International Directory;
- (d) Advertising : Cause materials to be prepared for advertising, promotion and marketing of the System for the benefit of the hotels in the System in the country or area in which the Hotel is located, to administer advertising and marketing programs and review proposed marketing materials prepared by Leasee for approval.

- (e) Manual : Provide and maintain a Systems operations and Building Standards Manual (“Manual”) containing standards and requirements for construction, conversion, equipping, furnishing and supplying hotels within the system and setting forth management operational standards, procedures and techniques.
- (f) Inspection : Conduct periodic inspections of the services and facilities provided to the public at the Hotel.
- (g) Advice and Consultation : Provide continuing consultation and advise to Lessee in the management, operation and marketing of the Hotel.

3.2 *Lessee’s Obligations*

Lessee acknowledges that the value of the hotel operation and management system developed by Park Plaza International (the “System”) can only be preserved and enhanced by maintaining a high standard of performance in the operating and maintenance of the Hotels within the System. In this respect, Lessee will do the following:

- (a) Maintenance of the System : Maintain the high standards and public image of the System, preserve the value and reputation of all service marks, trademarks, trade names and related goodwill, and otherwise use all reasonable means to promote and encourage the use of Park Plaza hotels and facilities everywhere by the public.
- (b) Maintenance of the Hotel : Maintain the Hotel in a clean, attractive and orderly condition,

using standards established by Park Plaza applicable to such hotels in the System, and make such repairs, additions or improvements as are necessary to maintain the agreed upon standards of the System.

- (c) Service : Provide efficient, courteous and high quality service to the public in accordance with the System.
- (d) Health Standard : Meet and maintain high health standards and ratings applicable to the operations of the Hotel.
- (e) Right of Inspection : Allow Operator and its agents to enter the Hotel at any reasonable time for conducting inspections to ensure compliance with the standards and policies of the System.
- (f) Reservation System : Participate in the International reservation system and observe all terms and conditions of participating in the international reservation system.
- (g) Legal Compliance : Comply with all governmental laws and requirements, pay all taxes and maintain all governmental licenses and permits necessary for operating the Hotel in accordance with the System.
- (h) Compliance with Agreement : Comply in all respect with the System Operations and Building Standards Manual, as amended from time to time and with all other requirements of the Agreement.

3.3 *Records, Reporting And Payments*

Leasee will be responsible for maintaining accurate records with respect to all matters affecting the performance hereof. Within ten (10) days after each month, Leasee will provide monthly reports on Room Revenues, occupancies, average daily rates, food and beverage and miscellaneous revenues, gross operating profit and such other information as Operator from time to time specifies.

3.4 *Proprietary Rights*

- (a) Proprietary Marks. Leasee acknowledges the name “Park Plaza International” and all related names, trademarks, service marks, copyrights, logos and other indicia, whether registered or not (“Marks”) are the exclusive property of Plaza Global Holdings, Inc. which granted a license to Golden Wall Investments Ltd. which grant a sub License to the Operator as more fully detailed in the preamble to this agreement. Leasee agrees not to use the name Park Plaza, Park Plaza, Park Suites or similar combination or variation thereof or the Marks other than in terms hereof without the prior written consent of Park Plaza.
- (b) Proper Use of the Marks : Proper use of the Marks pursuant to this Agreement applies only to their use in connection with the operation of the Hotel subject to the terms of this Agreement, and includes only such Marks as are designated herein or as may be designated by Park Plaza and Operator from time to time in writing.
- (c) Reservation of Rights. Nothing herein contained will ever be

construed as giving Leasee any right, title or interest whatsoever in or to the Marks or giving Leasee or others permission to use the Marks or any imitation thereof in any manner, except in accordance with the terms and provisions hereof or with the prior written approval of Park Plaza and/or the Operator, Leasee will not use any Marks as part of Leasee's corporate or other formal business name, except as may result as a consequence of operating the Hotel under the name "Park Plaza International" or "Park Plaza" or with the prior written consent of Park Plaza and Operator .

- (d) Undertaking not to Register Rights. Leasee will not register or attempt to register any of the Marks in any state, nation or political subdivision thereof. The use by Leasee of the Marks outside the scope of this sub-license, without the prior written consent of Park Plaza and Operator, will be an infringement of Park Plaza's exclusive right, title and interest in the Marks, and Leasee expressly covenants that during the term of this sub-license, and after the expiration or termination thereof, Leasee will not directly or indirectly commit an act of infringement or contest or aid in contesting the validity of ownership of Park Plaza's Marks, or take any other action in derogation thereof.
- (e) Rights upon Termination. Upon any termination or expiration of the Principal Agreement for any

reason and upon its terms, the sub-license awarded in terms hereof shall automatically lapse, and in such event Leasee will, at its expense, immediately remove and discontinue the use of all signs, furnishing, printed material, emblems, slogan or other distinguishing characteristics which are now or hereafter connected with the Park Plaza name or the Marks. Upon such termination or expiration, Leasee will not operate or do business at the Hotel under any name or in any manner that may tend to give the general public the impression that Leasee or the Hotel are in any way connected with Operator or Park Plaza or the System, and Leasee will, at its own expense, immediately make such modifications or alterations as may be necessary to distinguish the Hotel so clearly from its former appearance as to prevent any possible confusion therewith by the public. If he fails to take any of the foregoing action, Operator or its designated agents may enter the Hotel and adjacent areas at any time to take such actions, at Leasee's sole risk and expense without liability for trespass or other tort or criminal act.

- (f) Goodwill. It is expressly recognized that any and all goodwill associated with the Marks, including any goodwill which might be deemed to have arisen from the use of the Marks at the Hotel, inures directly and exclusively to the benefit of Park Plaza and is the property of Park

Plaza or of the companies affiliated with it. Upon expiration or termination of the Principal Agreement, no monetary value will be assigned as attributable to any goodwill associated with Leasee or the operation of the Hotel.



HOTEL MANAGEMENT AGREEMENT

EXHIBIT E

SPECIAL CONTRACT PROVISIONS

This Exhibit contains agreements and provisions which have been concluded between the Parties, and which relate specifically and only to the Hotel designated in Exhibit A.

HOTEL MANAGEMENT AGREEMENT

EXHIBIT F

Annual Budget



FIRST ADDENDUM

to the Hotel Management Agreement dated _____ (the “**Management Agreement**”) signed between the parties identified in **Exhibit A** thereto as “Operator” “Leasee” and “Owner” respectively.

Dated _____

Witnessing that it is hereby agreed by and between the Parties to revise the provisions of the Management Agreement as follows:

1. As to General

All the provisions of the Management Agreement and its exhibits, which are not being amended in this First Addendum, shall stay in full force and effect.

2. Early Termination

New section 45A shall be added to read -

“45A Notwithstanding anything to the contrary contained above, and without derogating from the rights of either party to terminate this Agreement for cause in terms of Paragraph 45 above, each party shall be entitled to terminate this Agreement on the giving of not less than six (6) months advance written notice.

Early Termination Fee

In the event that Leasee shall terminate this Agreement as provided in this section 45A, then and in such event Leasee shall be obliged and undertakes to pay to Operator an early termination fee in an amount equal to MFxMM.

MF means 1/12 of the Operator’s Fee, and the Franchise Fee provided for under **Exhibit D** attached hereto, paid to the Operator in respect of the accounting year immediately preceding the effective date of termination.

MM means 18 less the number of advance notice months provided for in the advanced written termination notice.

Operator shall not be entitled to receive an early termination fee in the event that: (a) Leasee shall have terminated this Agreement for cause in terms of the provisions of section 45 above; or (b) either Leasee or Operator shall have elected not to extend the Term of this Agreement to include the Extended Term as provided for in Paragraph 3.3 above.

3. Paragraph 2.3.1 shall be amended to read –

“2.3.1 to sell, transfer or otherwise dispose of its rights and interests in and to the Property and/or the Hotel, subject to Operator’s rights as specified in Paragraphs 45A and 50.3 below.”

4. Paragraph 50.3 shall be amended to read –

“ *Assignment by Leasee*

Leasee shall have the right to assign its rights and obligations under this Agreement and/or to sell and transfer its rights and interests in and to the Hotel to any third party without requiring the consent or approval of Operator, provided that such assignment and/or sale shall be made subject to this Agreement. The provisions of this Paragraph shall be in addition to, and shall not derogate from, the rights of Leasee in terms of Paragraphs 45 or 45A above.”

5. **Effect**

This Addendum is effective as from _____.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this First Addendum as of the date specified above.

For : Leasee	
Name :	_____
Title :	_____

For : Operator	
Name :	_____
Title :	_____

SECOND ADDENDUM

To the Hotel Management Agreement dated _____ (the “Management Agreement”) signed between the parties identified in Exhibit A thereto as “Operator” “Leasee” and “Owner” respectively.

Dated _____

Witnessing that it is hereby agreed by and between the Parties to revise the provisions of the Management Agreement as follows:

1. *As to Section 6*

Section 6: Central and Regional Office Services, shall be amended to read:

Operator shall provide administrative services in support of the Hotel, including general supervision, consultation, planing monitoring compliance with the sub license agreement, corporate finance, personal and employee relations, research and development, and the services of Operator’s technical operational and marketing experts making periodic inspections and consultation visits to the Hotel.

Operator shall also provide various marketing services and advertising.

(All the said services shall herein be called “**Central Office Services**”).

The Central Office Services shall be rendered to the Hotel together with the other hotels operated by Consultant in any respective year by Operator’s regional and central offices.

All the cost of the performance of the Central Office Services including all the employment costs of the personnel employed in the performance of the Central Office Services and all the general and administrative costs to be incurred in connection to the performance of the Central Office Services shall, whether incurred by any of the hotels operated by Operator, be borne and defrayed by the hotels operated by Operator so that operator shall reimbursed for all these costs. Leasee shall bear its pro rata share of such actual and substantiated costs incurred by Operator, provided however that the total amount of such costs to be borne by Leasee shall not exceed 3% (three percent) of the Gross Operating Profit of the Hotel.

Notwithstanding the aforesaid, the costs of employment of the CEO of Operator and maintaining his office shall be borne by Operator without reimbursement from the Hotel or the other hotels operated by Operator.

2. *As to Section 22*

Section 22.2.2: a new subsection (xv) shall be inserted after section (xiv) to read:

(xv) The Base Fee (as calculated in accordance with the provisions of section 21.1.a. above).

3. *As to General*

All the provisions of the Management Agreement and its exhibits, which are not being amended in this Second Addendum, shall stay in full force and effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum as of the date specified above.

For : Leasee	
Name :	_____
Title :	_____

For : Operator	Park Plaza Hotels Europe B.V.
Name :	_____
Title :	_____

Dated, _____

On the date hereof we the undersigned, _____. (“**Leasee**”) and Park Plaza Hotels Europe B.V. (“**Operator**”), entered into a Hotel Management Agreement (the “**Hotel Management Agreement**”) pursuant to which Operator shall manage the _____ Park Plaza Hotel in London (the “**Hotel**”).

Notwithstanding any thing contained in the Hotel Management Agreement, it is hereby agree between the parties that in the event that the Leasee and/or the Owner shall introduce and offer a time sharing program in the Hotel - the revenue in consideration for the sale of such program units itself (in distinction to maintenance fees or other payment of a category similar to maintenance fee such as annual club membership fee) **shall not** be part of the Hotel’s “Gross Operating Profit” or the “Room Revenues” in accordance with section 22 of the Hotel Management Agreement and accordingly shall not be part of the basis of calculation of the fees payable to Operator pursuant to the Hotel Management Agreement or its early termination.

IN WITNESS WHEREOF,

For : Leasee	
Name :	_____
Title :	_____

For : Operator	Park Plaza Hotels Europe B.V.
Name :	_____
Title :	_____

THIS AMENDED AND RESTATED LOAN AGREEMENT is dated this 9th day of July 2003 between:

- (1) **ELBIT MEDICAL IMAGING LTD.**, a public company (with company number 52-004303-5) organised and existing under the laws of the State of Israel, having its registered office at 13 Moses Street, Tel Aviv, Israel, as borrower (the "**Borrower**"); and
- (2) **BANK HAPOALIM B.M.**, a banking corporation incorporated in the State of Israel, acting through its Main Tel Aviv branch, whose address is at 41-45 Rothschild Boulevard, Tel Aviv, Israel, as Bank (the "**Bank**").

WHEREAS the Borrower entered into a Letter of Undertaking in favour of the Bank ("LOU") dated 27 September 2000; and

WHEREAS the parties wish to make certain amendments in the nature of the Loan provided under the LOU and in the collateral furnished therefor, and to amend the LOU in certain other respects, all subject to and in accordance with the terms and conditions set out herein.

NOW, THEREFORE, IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

"Accounts"

means:

- (a) the Loan Account; and
- (b) the Revenue Account.

"Advance"

means the principal amount of loans advanced under the LOU and/or to be advanced under this Agreement, which are from time to time outstanding.

"Affiliate"

means a Subsidiary or a Holding Company of the Bank or any other Subsidiary of that Holding Company.

"Agency"

includes, in relation to a state or supranational organisation, any agency, authority, central bank, department, government, legislature, ministry, official or public person (whether autonomous or not) of, or of the government of, that state or supranational organisation.

"Agreement"

means this agreement.

"Authorised Investments"

has the meaning ascribed to such term in Clause 17.5(c).

"Available Currency"

means Dollar and Euro.

"Bank's Spot Rate of Exchange"

means the Bank's spot rate of exchange for the purchase of the relevant Available Currency in the London foreign exchange market at or about 11.00a.m. on a particular day.

"Borrower Funded Subsidiary"

means any direct or indirect Subsidiary of the Borrower engaged in the Business, where the Equity Contributions of the Borrower in such Subsidiary have been funded, in whole or in part, by utilising the proceeds of the Facility, namely those Subsidiaries specified in **Schedule 3.**

"Business"

means the business of owning and operating commercial and entertainment centers in Central and Eastern Europe, including the development, acquisition, refurbishment, conversion, extension and construction of commercial and entertainment centers in Central and Eastern Europe, whether directly or indirectly by the Borrower, or via its Borrower Funded Subsidiaries and whether by way of direct acquisition of rights in real estate or acting through any other legal entity.

"Business Day"

means a day (other than a Saturday or a Sunday) on which banks are open for business in London, Tel-Aviv and New York.

"Business Group"

means the Borrower, the Holding Subsidiaries and the Borrower's Funded Subsidiaries.

"Charges"

means each of the following pledges:

- (a) share pledge to be executed by Plaza Centers in favour of the Bank over its shares in Sadyba Center S.A.;
- (b) share pledge dated the date hereof executed by Elbit Ultrasound (Netherlands) B.V. and Stichting L'Orage in favour of the Bank over their shares in Plaza Centers, comprising the entire issued and paid up share capital of Plaza Centers; and
- (c) a pledge dated 28 January 2002 over 615,500 ordinary shares, par value NIS 0.5 in Elscint Ltd., which shares are deposited in the Revenue Account and pledged in favour of the Bank.

"Charge over Accounts"

means the charge dated the date hereof executed by the Borrower in favour of the Bank over the Loan Account and the Revenue Account.

"Cost Base"

means:

- (a) in relation to an Advance in Dollars, LIBOR; and
- (b) in relation to an Advance in Euro, EURIBOR.

"Default"

means an Event of Default, or an event or circumstance which but for the giving of notice, passage of time, the making of any determination or fulfillment of any other applicable condition (or any combination of the foregoing) would constitute an Event of Default.

"Distribution"

means any monies received from and/or transfers made by any Borrower Funded Subsidiary deriving from the Business which are made in respect of and/or deriving from dividends, returns on capital, repayments of share premium, payments with respect to repayment of shareholder loans, award of loans made to the Borrower by any Borrower Funded Subsidiary, redemption, and/or any other distribution of any kind or description constituting a repayment or return on investment, in all cases net

of bank charges, reasonable brokerage fees and withholding taxes, but, excluding Free Funds.

"Dollar" or "\$"

means the lawful currency for the time being of the United States of America.

"Elbit Ultrasound Loan Agreement"

means the loan agreement between the Bank and Elbit Ultrasound (Netherlands) B.V., dated the date hereof.

"EBRD"

means the European Bank for Reconstruction and Development.

"EBRD Conversion Option"

means the option awarded to EBRD in terms of the EBRD Equity Financing Facility, in terms of which EBRD has the option to convert the amount of the EBRD Equity Financing Facility into shares of Plaza Centers, constituting up to ten percent (10%) of the issued share capital of Plaza Centers, to be issued and allotted to EBRD.

"EBRD Equity Financing Facility"

means the loan facility to be awarded by EBRD to Plaza Centers in an amount of Euro 35,000,000 (thirty five million Euros) for the funding of equity in Subsidiaries of Plaza Centers engaged in the Business, in relation to which EBRD has been awarded the EBRD Conversion Option;

"Equity Amount"

means the amount of the Equity Contributions in relation to each Project funded by the Bank, as set out in **Schedule 3** (as updated by written agreement of both the Bank and the Borrower, from time to time).

"Equity Contributions"

means the investments (whether in the form of shareholder loans or as equity investment) which have been made by the Borrower (directly or indirectly through a Borrower Funded Subsidiary or Holding Subsidiary) into the capital of each special purpose company which is established by the Borrower for the purpose of the Business, namely those amounts specified against the name of each Project comprising the Business as detailed in **Schedule 3**.

"Euro"

means the single currency of Participating Member States introduced in accordance with the provisions of Article 109(1)4 of the Treaty.

"EURIBOR"

means, in relation to an Advance or unpaid sum denominated in Euro for an Interest Period:

- (a) the rate per annum equal to the rate for deposits in Euro determined by the Banking Federation of the European Union for the relevant period, displayed on the Telerate Screen page 248 or any equivalent successor to that page or other page as appropriate (as reasonably determined by the Bank) (for the purposes of this definition, the **"Telerate Screen"**); or
- (b) if the relevant rates do not appear on the Telerate Screen for the purposes of paragraph (a) above, or the Bank reasonably determines that no rate for a period of comparable duration to the relevant Interest Period appears on the Telerate Screen) the arithmetic mean (rounded upwards to five decimal places) of the rates, as supplied to the Bank at its request, quoted by the Reference Banks to leading banks in the European Interbank Market,

at or about 11.00 a.m. on the relevant Rate Fixing Day for the offering of deposits in Euro for a period comparable to the relevant Interest Period or relevant period in respect of any unpaid sum.

"Europe Israel Loan Agreement"

means the loan agreement between the Bank and the Shareholder, dated 4 May 1999 (as amended or replaced, from time to time).

"Event of Default"

means an event specified as such in Clause 16.1 (Events of Default).

"Facility"

means the Loan awarded in terms of this Agreement.

"Final Maturity Date"

means 31st December 2012.

"Finance Charges"

means:

- (a) interest, commissions, fees and costs payable by the Borrower under the Finance Documents;
- (b) amounts ascertained as being payable by the Borrower under Clause 10 (Taxes), Clause 12 (Increased Costs), Clause 20 (Stamp Duties) and Clause 21 (Indemnities) of this Agreement; and
- (c) any value added or other taxes payable by the Borrower in respect of the above,

but excluding Financing Principal.

"Finance Documents"

means:

- (a) this Agreement;
 - (b) each Security Document; and
 - (c) the Documentation required to open or operate the Accounts,
- and any other document designated as such by the Bank and the Borrower.

"Financial Indebtedness"

means any indebtedness in respect of:

- (a) moneys borrowed or debit balances at banks and other financial institutions;
- (b) any charge, bond, note, loan stock or other security;
- (c) any documentary credit;
- (d) receivables sold or discounted (otherwise than on a non-recourse basis);
- (e) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession by the party liable where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (f) any lease entered into primarily as a method of raising finance or financing the acquisition of the asset leased;

- (g) any currency swap or interest swap, cap or collar arrangement or any other derivative instrument;
- (h) any amount raised under any other transaction having the commercial effect of a borrowing or raising of money; or
- (i) any guarantee, indemnity or similar assurance against financial loss of any person.

"Financing Principal"

means principal amounts outstanding from time to time under this Agreement.

"Free Funds"

means any cash attributable to operating profits generated by a Project which may become available to the relevant Borrower Funded Subsidiary after all debt service reserve and other retention and security obligations in terms of the Project's senior debt facility have been satisfied and fulfilled.

"GAAP"

means:

- (a) in relation to Borrower - the Israeli accounting standards promulgated from time to time by the Israeli Accounting Standards Committee (or equivalent body); and
- (b) in relation to Plaza Centers - international accounting standards promulgated from time to time by the International Accounting Standards Committee.

"Group"

means, at any time, the Borrower and its Subsidiaries at that time.

"Guarantee"

means the guarantee entered into by Plaza Centers in favour of the Bank, dated the date hereof, in which Plaza Centers guarantees the obligations of the Borrower pursuant to this Agreement in the form and text attached hereto as marked as **Schedule "6"**.

"Holding Company"

in relation to a person, means an entity of which that person is a Subsidiary.

"Holding Subsidiary"

means:

- (a) Elbit Medical Holdings Ltd.
- (b) Elbit Ultrasound Ltd.
- (c) Elbit Ultrasound (Netherlands) B.V.; and
- (d) Plaza Centers.

“Index”

means the consumer price index (also known as the cost of living index), including fruit and vegetables, published by the Central Bureau of Statistics in Israel (the “Bureau”), including the same index even if published by any other government institution and also including any official index replacing the same, whether based on the same data on which the existing index is based or not. If another index replaces the existing index, the Bureau shall determine the conversion ratio between them, and if the Bureau does not determine the conversion ratio between them within three (3) months of the publication of the other index, it shall be reasonably determined by the Bank in consultation with economic experts.

"Initial Commercial Centers"

the eight (8) commercial centers listed on **Schedule 2** (Initial Commercial Centers).

"Insurance Proceeds"

means all proceeds of Insurances payable to or for the account of the Borrower whether by way of claims, return of premiums or otherwise.

"Insurances"

means all contracts and policies of insurance and re-insurance of any kind which pertain to the Business and which are taken out by or on behalf of the Business Group in accordance with the Finance Documents or (to the extent of its interest) in which the Borrower has an interest.

"Interest Period"

means each period determined in accordance with Clause 7 (Interest Periods).

"LIBOR"

means:

- (a) the rate per annum for deposits in Dollars which appears on Telerate Screen page 3750 or any equivalent successor to such page or other page as appropriate (as reasonably determined by the Bank) (for the purposes of this definition, the "**Telerate Screen**"); or
- (b) if the relevant rates do not appear on the Telerate Screen for the purposes of paragraph (a) above, or the Bank reasonably determines that no rate for a period of comparable duration to the relevant Interest Period appears on the Telerate Screen, the arithmetic mean (rounded upwards to five decimal places) of the rates, as supplied to the Bank at its request, quoted by the Reference Banks to leading banks in the London Interbank Market,

at or about 11.00 a.m. on the applicable Rate Fixing Day for the offering of deposits in the currency of the relevant Advance for a period comparable to the relevant Interest Period.

"Loan"

means the aggregate amount of:

- (a) Tranche A; and
- (b) Tranche B.

"Loan Account"

means the account so designated to be maintained in accordance with this Agreement with account number 600/664513 at the Loan Office in the name of the Borrower.

"Loan Assignment"

means the assignment by way of security dated the date hereof entered into by the Borrower in favour of the Bank in relation to the Plaza Centers Loans, in the form attached hereto as **Schedule "7"**.

"Loan Office"

means the central Tel Aviv branch of the Bank or such other branch in Israel as may be designated by the Bank by written notice to the Borrower at least fifteen (15) days in advance.

"Loan Period"

means the period commencing on the date hereof and ending on the Final Maturity Date.

"Mandatory Cost"

means the cost imputed to the Bank for compliance with any applicable regulatory or central bank requirement relating to any Advance made through a branch in the jurisdiction of the currency of the Advance.

"Margin"

means 3.35% (three and thirty five hundredths percent) per annum.

"Material Adverse Effect"

means any effect which, in the opinion of the Bank:

- (a) is or is likely to be materially adverse to the ability of the Borrower to perform or comply with its obligations under the Finance Documents (including any of its payment obligations under the Finance Documents) in a timely manner; or
- (b) is or is likely to be materially prejudicial to:
 - (i) the interests of the Bank under the Finance Documents; or
 - (ii) the business, operations or financial condition of the Borrower;

"Net Loan Amount"

means all outstanding:

- (a) Tranche A Advances; and
- (b) Tranche B Advances; plus
- (c) amounts pursuant to the Elbit Ultrasound Loan Agreement;
- (d) loans or other facilities provided by the Bank which, at the date hereof, includes the loan provided by the Bank to the Borrower for the purposes of an investment in Insightec Image Guided Treatment Ltd. ("*Insightec*") in the amount of US\$ 10 million (ten million US Dollars); and
- (e) the guarantee provided by the Borrower in favour of the Bank in relation to the loan provided by the Bank to InSightec in the amount of US\$ 5 million (five million US Dollars),

together with all Finance Charges accruing thereon.

"NIS"

means the lawful currency for the time being of the State of Israel.

"Original Group Accounts"

means the audited and consolidated financial statements of the Borrower and Plaza Centers for the financial year ended 31st December, 2002.

"Outstanding Equity Loan Amount"

means the outstanding amounts of :

- (a) the Tranche A Advances;
- (b) the Tranche B Advances; and
- (c) the Elbit Ultrasound Loan Agreement.

"Participating Member State"

means a member state of the European Union that has adopted the single currency in accordance with the Treaty;

"Party"

means a party to this Agreement.

"Permitted Security Interest"

means:

- (a) any Security Interest arising under the Security Documents;
- (b) any Security Interest created by the Borrower or a Borrower Funded Subsidiary either before or after the date hereof to a financial institution in respect of the Refinancing by the Borrower and/or the relevant Borrower Funded Subsidiary of an existing Project (subject to the prior written consent of the Bank); and
- (c) any Security Interest (other than those set out above) created by the Borrower or a Borrower Funded Subsidiary after the date hereof, to a financial institution in respect of the purchase of a new asset and/or in respect of the development and construction of a new Project provided that the financial institution is funding such new asset or Project,

provided, that no Security Interest created by the Borrower or any Borrower Funded Subsidiary after the date hereof shall impair or rank ahead of any Security Interest arising under the Security Documents (other than in the circumstances provided in the charge over the shares of Plaza Centers in Sadyba Center S.A.).

"Plaza Centers"

means Plaza Centers (Europe) B.V., a company organized and existing in the Netherlands with its registered office at 239 Keizersgracht, EA1016 Amsterdam, The Netherlands.

“Plaza Centers Loans”

means any and all shareholders loans made by the Borrower to Plaza Centers directly or by way of any Holding Subsidiary and outstanding from time to time.

"Project"

means all those projects comprising the Business which have been and/or shall be developed, constructed and operated by Borrower's Funded Subsidiaries.

"Prepayment Amount"

means, in relation to the events set out in Clause 6.2, as follows:

- (a) where all or part of Plaza Centers is sold, the percentage of Plaza Centers sold in the Trigger Event multiplied by the Outstanding Equity Loan Amount on the date of the occurrence of the Trigger Event; or
- (b) where all or part of a Project is sold, the percentage of the Project sold in the Trigger Event multiplied by the Equity Amount for that Project on the date of the occurrence of the Trigger Event.

"Rate Fixing Day"

means the second Business Day before the first day of an Interest Period for an Advance (or such other day as is generally treated as the rate fixing day by market practice in the London interbank market).

"Reference Banks"

means, subject to Clause 24.3 (Reference Banks), HSBC plc, Citibank, The Royal Bank of Scotland and Barclays Bank.

“Refinancing”

means any loan facility awarded to a Borrower Funded Subsidiary in respect of a Project, the proceeds of which are applied in part to the repayment of either:

- (a) the construction loan facility awarded to that Borrower Funded Subsidiary in respect of the development of the relevant Project; or
- (b) any previous refinancing loan facility awarded to that Borrower Funded Subsidiary in respect of the relevant Project.

"Revenue Account"

means the account so designated to be maintained in accordance with this Agreement with account number 600/665765 at the Loan Office in the name of the Borrower.

"Revenues"

means all net amounts payable to and/or received by the Borrower and/or to its account pertaining to the Business including, without limitation:

- (a) all revenues, loan repayments and Distributions received from any of the Borrower Funded Subsidiaries;
- (b) interest and other income earned on balances standing to the credit of any bank accounts conducted by (i) Borrower in respect of the Business; and (ii) Borrower's Funded Subsidiaries (to the extent not subject to a Security Interest in terms of the senior debt facility taken out by that Borrower Funded Subsidiary);
- (c) all Insurance Proceeds and
- (d) all proceeds received upon a Refinancing, sale, public offering or private placement.

"Sadyba Project"

means the commercial and entertainment center situated in the Sadyba District of Warsaw, Poland, owned by Sadyba Center S.A. in which Plaza Centers presently holds a fifty per cent (50%) interest.

"Sadyba Option"

means either:

- (a) the call option in favour of Plaza Centers to acquire the remaining fifty per cent (50%) of the issued share capital of Sadyba Center SA; or
- (b) the put option in favour of I.T. Sadyba BV (a subsidiary of the Israel Theaters Group) to demand the acquisition by Plaza Centers of the fifty per cent (50%) shareholding held by it in Sadyba Center SA.

"Security Asset"

means any asset which is the subject of any Security Interest under the Security Documents.

"Security Documents"

means:

- (a) the Charges;
- (b) the Charge over Accounts;
- (c) the Subordination Agreements;
- (d) the Guarantee; and
- (f) the Loan Assignment,

and any other document evidencing or creating any Security Interest over any asset of the Borrower to secure any obligations of the Borrower to the Bank under the Finance Documents.

"Security Interest"

means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

"Shareholder"

means Europe Israel M.M.S. Ltd., a company organized and existing in the State of Israel with its registered office at 13 Moses Street, Tel Aviv 67442.

"Subordinated Creditor"

means any Subsidiary or Holding Company of the Borrower that has, from time to time, provided debt funding to the Borrower.

"Subordination Agreements"

means:

- (a) the subordination agreement dated the date hereof between the Bank, the Borrower and the Subordinated Creditor named therein, and
- (b) each subordination agreement to be entered into from time to time (substantially in the form of **Schedule 4** (Subordination Agreement)) in accordance with the terms of Clause 15.10.

"Subsidiary"

means an entity from time to time of which a person has direct or indirect control, or owns directly or indirectly more than twenty five per cent. (25%) of the share capital or similar right of ownership.

"Taxes"

includes all present and future income and other taxes, levies, imposts, deductions, charges and withholdings in the nature of taxes whatsoever together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and **"Taxation"** shall be construed accordingly.

"Tranche A "

means US\$40,450,000 (forty million four hundred and fifty thousand US Dollars) to the extent not cancelled, transferred or reduced under this Agreement.

"Tranche B"

means US\$17,500,000 (seventeen million five hundred thousand US Dollars) to the extent not cancelled, transferred or reduced under this Agreement.

"Tranche A Advance"

means any Advance made under Tranche A.

"Tranche B Advance"

means any Advance made under Tranche B.

"Treaty"

means the Treaty establishing the European Economic Community, being the Treaty of Rome of 25 March 1957 as amended by the Single European Act 1986 and the Maastricht Treaty (which was signed on 7 February 1992 and came into force on 1 November 1993) as amended, varied or supplemented from time to time.

"Trigger Event"

has the meaning ascribed to such term in Clause 6.2(b)(Mandatory Prepayment).

1.2 Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to:
 - (i) an **"amendment"** includes a supplement, novation or re-enactment and **"amended"** is to be construed accordingly;
 - "assets"** includes properties, revenues and rights of every description;
 - an **"authorisation"** includes an authorisation, consent, approval, resolution, licence, exemption, filing and registration;

"control" means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise;

a **"month"** is a reference to a period starting on one day in a calendar month and ending on the day before the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last day in that calendar month;

a **"person"** includes any person, firm, company, corporation, partnership, association, government, state, Agency or other entity or one or more of them;

a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, Agency, department or regulatory, self-regulatory or other authority or organisation;

a **"Screen"** or a **"Page"** " on a "Screen" in the definition of "LIBOR" and "EURIBOR" includes any replacement screen or page nominated by the British Bankers Association as the information vendor for the purpose of displaying British Bankers Association Interest Settlement Rates for deposits in various currencies;

- (ii) a provision of law is a reference to that provision as amended or re-enacted;
 - (iii) a Clause or a Schedule is a reference to a clause of or a schedule to this Agreement;
 - (iv) a person includes its successors and/or assigns;
 - (v) a Finance Document or another document is a reference to that Finance Document or other document as amended, subject to compliance with the terms of this Agreement;
 - (vi) a time of day is a reference to Tel Aviv time; and
 - (vii) any representation by the Borrower, being to the best of its knowledge shall be deemed to be to the best of such person's knowledge after due inquiry.
- (b) Unless the contrary intention appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (c) The index to and the headings in this Agreement are for convenience only and are to be ignored in construing this Agreement.
 - (d) In this Agreement, words denoting the singular include the plural and vice versa; words denoting any gender include all genders.

2. LOAN

Subject to the terms of this Agreement, the Bank has advanced a loan to the Borrower consisting of two tranches, as follows:

- (i) Tranche A; and
- (ii) Tranche B.

3. PURPOSE

The Borrower has applied the proceeds of each Advance of Tranche A and Tranche B solely to fund its Equity Contributions to the Borrower Funded Subsidiaries in respect of the Business. Without affecting the obligations of the Borrower in any way, the Bank has no duty to monitor or verify the application of any Advance.

4. CONDITIONS PRECEDENT

The obligations of the Bank to the Borrower under this Agreement are subject to the condition precedent that the Bank has received originals, or where appropriate, copies certified as true, complete and up-to-date by an authorised signatory of all of the documents set out in **Schedule 1** (Conditions Precedent Documents) in form and substance satisfactory to the Bank.

5. REPAYMENT

5.1 Tranche A

The Borrower shall repay the Tranche A Advance in 18 (eighteen) semi-annual installments commencing on 30 June 2004 and with the final installment due and payable on the Final Maturity Date, and same in accordance with the Repayment Schedule, as provided in Clause 5.4 (Repayment Schedule).

5.2 Tranche B

The Borrower shall repay the Tranche B Advance as follows:

- (a) \$8 million (eight million US Dollars) on 30 September 2003; and
- (b) \$9.5 million (nine million five hundred thousand US Dollars) on 31 December 2003.

5.3 Currency

Each Advance shall be repaid in the Available Currency in which such Advance was borrowed.

5.4 Repayment Schedule

Schedule 6 (Repayment Schedule) sets out, on the basis of the outstanding Tranche A and Tranche B Advances on the date hereof, the amounts to be repaid by the Borrower on the last day of each Interest Period up to and including the Final Maturity Date. In the event that any prepayment of the Loan shall be effected by Borrower in accordance with Clauses 6.1 to 6.3 inclusive below, the amount of such prepayment shall be applied pro rata to all future repayment installments and the Repayment schedule amended accordingly.

5.5 Loan Amount

If, on the last day of an Interest Period, the outstanding debit balance of the Loan Account (howsoever arising) including, inter alia, Tranche A Advances in Dollars (or, if in another Available Currency, when converted into Dollars on the basis of the Bank's Spot Rate of Exchange), bank charges, expenses, commissions, interest payments, exceed the amount scheduled to be outstanding on such date as set down in **Schedule 6** (Repayment Schedule) ("*Scheduled Amount*"), the Borrower shall prepay any amount in excess of the Scheduled Amount within 5 (five) Business Days.

6. PREPAYMENT AND CANCELLATION

6.1 Voluntary Prepayment of Tranche A and Tranche B

The Borrower may, by giving not less than 30 days' prior notice to the Bank, prepay the Tranche A Advance and, following prepayment of the entire Tranche A Advance, the Tranche B Advance in whole or in part (but, if in part, at least the equivalent of US\$100,000 (one hundred thousand US Dollars)) provided that the prepayment is made on the last day of an Interest Period for that Advance.

6.2 Mandatory Prepayment

- (a) The Borrower shall, upon the occurrence of any Trigger Event (as such term is defined in sub-clause (b) of this Clause 6.2) and subject to Clause 6.2(h), deposit all Revenues arising from such Trigger Event in the Revenue Account immediately upon receipt thereof. On the last day of the Interest Period in which the Revenues deriving from a Trigger Event have been deposited into the Revenue Account as aforesaid, the Bank shall apply the amount of such Revenues required to be prepaid pursuant to this Clause 6.2, in prepayment as follows:
 - (i) first, against Tranche A Advances; and
 - (ii) thereafter, against Tranche B Advances.
- (b) For the purposes of this Clause 6.2 (Mandatory Prepayment) each of the following events constitutes a Trigger Event:
 - (i) any public offering or private placement of any securities of the Borrower, or any Borrower Funded Subsidiary;

- (ii) a merger or consolidation of the Borrower or any Borrower Funded Subsidiary with any other entity;
 - (iii) a sale, assignment, lease, or other disposal of (whether in one transaction or a series of transactions) any of the assets of the Borrower or any Borrower Funded Subsidiary assets including any shareholdings in any such Borrower Funded Subsidiary and any intellectual property to any person or entity;
 - (iv) a sale of any asset of the Borrower or Borrower Funded Subsidiary;
 - (v) a Refinancing of any debt of the Borrower or any Borrower Funded Subsidiary; or
 - (vi) the receipt by the Borrower of any Distributions; or
 - (vii) the exercise by EBRD of the EBRD Conversion Option.
- (c) Upon any Refinancing of the Initial Commercial Centers at such time as the Net Loan Amount is \$40,000,000 (forty million US Dollars) or more, the total Revenues from such Refinancing shall be paid into the Revenue Account and applied in accordance with Clause 6.2(a) until such time as all outstanding Tranche B Advances have been repaid in full, provided that, should the aggregate Revenues from the Refinancing of the Initial Commercial Centers exceed US\$57,000,000 (fifty seven million US Dollars), such excess Revenues shall be deemed to be a “future Refinancing” for the purposes of sub-clause (d) below.
- (d) Upon the Refinancing of any Project, a Borrower Funded Subsidiary or Plaza Centers (other than the Initial Commercial Centers) or any future Refinancing of the Initial Commercial Centers at such time as the Net Loan Amount is \$40,000,000 (forty million US Dollars) or more, the Borrower shall subject to Clause 6.2(h), procure that forty percent (40%) of the Revenue from such Refinancing, less:
- (i) any sums in prepayment of any senior construction loans or any refinancing loans in place prior to the date hereof in relation to such Project;
 - (ii) reasonable expenses, costs and commissions incurred in respect of the award of the Refinancing Facility; and
 - (iii) other expenses approved by the Bank,
- shall be paid into the Revenue Account and applied in accordance with Clause 6.2(a).
- (e) Upon:
- (i) a sale of Plaza Centers (in whole or in part); or

- (ii) a sale of a Project (in whole or in part), including the sale of all or part of the shares of the Borrower Funded Subsidiary which is the owner of the relevant Project; or
- (ii) a public offering or private placement of any securities of Plaza Centers or a Borrower Funded Subsidiary owning a Project;

the Borrower shall subject to Clause 6.2(h), procure that the Revenues equal to the Prepayment Amount shall be paid into the Revenue Account and applied in accordance with Clause 6.2(a).

- (f) In the event that EBRD shall elect to exercise the EBRD Conversion Option, the Borrower undertakes to procure that the amount which is equivalent to:
 - (i) the Outstanding Equity Loan Amount at the date of the exercise of the EBRD Conversion Option; multiplied by
 - (iii) the percentage of the outstanding share capital
 - (iv) of Plaza Centers allotted to EBRD in consequence of the exercise of the EBRD Conversion Option,

shall be deposited into the Revenue Account by not later than the last day of the Interest Period during which such share allotment is consummated, which amount shall be applied in the manner provided for in Clause 6.2(a) above.

- (g) Notwithstanding the provisions of Clause 6.2(d) above, in the event that Plaza Centers:
 - (i) elects to exercise the Sadyba Option; and
 - (ii) obtains senior debt financing for the Sadyba Project,

then and in such event the proceeds of such senior debt financing shall be applied as follows:

- (aa) to the payments due in respect of the exercise of the Sadyba Option;
- (bb) thereafter, to the acquisition of the freehold ownership rights in and to the property upon which the Sadyba Project is constructed; and
- (cc) thereafter, pari passu to the repayment of equity loan facilities taken out by Plaza Centers specifically in respect of the Sadyba Project from:
 - (A) Bank Leumi in the amount of US\$ 1,700,000 (one million seven hundred thousand US Dollars); and
 - (B) the Bank in accordance with the amount provided in Schedule C; and

- (dd) thereafter, the Borrower undertakes to procure, subject to Clause 6.2(h), that any Revenues remaining after the execution of the above payments, if any, shall be deposited into the Revenue Account and applied in the manner provided for in Clause 6.2(d) above.
- (h) (i) If, upon the occurrence of any Trigger Event, Plaza Centers is required to pay Revenues to EBRD pursuant to the terms of the EBRD Equity Financing Facility (due to a portion of the EBRD Equity Financing Facility having been applied to the Borrower Funded Subsidiary in relation to which the Trigger Event occurs) as well as to the Revenue Account (in accordance with this Clause 6.2), then the Borrower shall – notwithstanding the other provisions of this Clause 6.2 - apply such Revenues *pari passu* between the Revenue Account and EBRD, *pro rata* to the Equity Amount and the portion of the EBRD Equity Financing Facility applied in relation to such Borrower Funded Subsidiary.
- (ii) In the event that, pursuant to the terms of the EBRD Equity Financing Facility, Plaza Centers is required to pay all Revenues resulting from a particular Trigger Event first to EBRD, the Borrower shall not be obliged to pay such Revenues to the Revenue Account and the Equity Contributions in relation to the other Borrower Funded Subsidiaries (other than any Borrower Funded Subsidiary in relation to which a Trigger Event shall have occurred since the date of this Agreement) shall be increased *pro rata* by the amount of the Equity Contribution in relation to that Borrower Funded Subsidiary, so that the total Equity Contributions shall not be reduced as a result of such Trigger Event.

6.3 Miscellaneous provisions

- (a) Any notice of prepayment or cancellation under this Agreement is irrevocable.
- (b) Any partial prepayment of Tranche A or Tranche B shall be applied in equal shares to all future Tranche A or Tranche B principal repayment installments.
- (c) Any prepayments under this Agreement shall be made together with accrued interest and all other amounts accrued under the Finance Documents (including, without limitation pursuant to Clause 21 (Indemnities)).
- (d) No prepayment or cancellation is permitted except in accordance with the express terms of this Agreement.
- (e) Any amount prepaid may not subsequently be re-borrowed (save as provided in terms of Section 6A.2 below).
- (f) To the extent that the payment of amounts to the Revenue Account after any of the Trigger Events set out in Clause 6.2 (Mandatory Prepayment) is dependent upon a Distribution being made by a Borrower Funded Subsidiary and/or by a Holding Subsidiary, the Borrower shall procure that such Distributions are made in order that

such amounts may be paid by the Borrower into the Revenue Account in accordance with Clause 6.2 (Mandatory Prepayment).

- (g) No pre-payment penalties shall be imposed upon a pre-payment in accordance with the provisions of this Clause 6.

6A. CONVERSION OF AVAILABLE CURRENCY

6A.1 Request

- (a) The Borrower may request that a portion of Tranche A (not exceeding fifty per cent (50%) of the total amount outstanding under the Facility at such time) (the “**Loan Component**”) be converted into an Available Currency for the next Interest Period by submitting a written request to the Bank not later than ten (10) Business Days before the commencement of the forthcoming Interest Period.
- (b) The Loan Component shall remain denominated in such Available Currency for all future Interest Periods unless the Borrower submits a further request in accordance with this Clause 6A.1 (Request).

6A.2 Amount of Available Currency

If a Loan Component, or any portion thereof, is to be continued during its next Interest Period in a different currency (the “**new currency**”) from that in which it is currently denominated (the “**old currency**”), the Loan Component shall be repaid by the Borrower in full at the end of its current Interest Period in the old currency and, subject to the terms of this Agreement, shall be promptly thereafter re-advanced by the Bank in the new currency on the same terms and conditions specified in this Agreement, mutatis mutandis; the repaid amount shall be re-advanced in the new currency in an amount to be determined on the basis of the Bank’s Spot Rate of Exchange between the old currency and the new currency, two (2) Business Days before the commencement of that Interest Period.

6A.3 Prepayment

A repayment or prepayment of an Advance shall be in the currency in which each Loan Component was denominated in the Interest Period immediately prior to the date of such repayment or prepayment.

6A.4 Loan Amount

The provisions of this Clause 6A (Conversion of Available Currency) do not derogate from the provisions of Clause 5.5 (Loan Amount).

7. INTEREST PERIODS

7.1 Selection

Each Interest Period shall be a six-month period provided, however, that:

- (a) the first Interest Period shall commence on the date of this Agreement and shall end on 31 December 2003; and
- (b) the final Interest Period shall end upon the Final Maturity Date.

7.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

8. INTEREST

8.1 Interest rate

The rate of interest on each Advance for each of its Interest Periods is the rate per annum determined by the Bank to be the aggregate of:

- (a) the Margin; and
- (b) the Cost Base.

8.2 Due dates

Accrued interest on each Advance is payable by the Borrower on the last day of each Interest Period for that Advance.

8.3 Consolidation

All outstanding Advances for Tranche A and Tranche B, respectively, shall be consolidated on the date hereof to form one single Advance for Tranche A and Tranche B, respectively.

8.4 Default interest

- (a) If the Borrower fails to pay any amount payable by it under the Finance Documents, it shall, forthwith on demand by the Bank, pay interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at the default rate of interest customary at the Bank at such time for loans in the Available Currency provided that the default rate shall, in no event, be lower than 5.5% (five and one-half percent) above the Interest Rate of the Advance over due amount under Clause 8.1 (Interest Rate) immediately before the due date.

- (b) If the Bank determines that deposits in the currency of the overdue amount are not at the relevant time being made available by the Reference Banks to leading banks in the London interbank market, the default rate will be determined by reference to the cost of funds to the Bank from whatever sources it may select.
- (c) Default interest shall be due and payable on demand and shall be compounded periodically as customary in the Bank from time to time.

8.5 Notification

The Bank shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

9. PAYMENTS

9.1 Place

All payments by the Borrower under the Finance Documents shall be made to the Bank to its account at the Loan Office or such other place as the Bank may notify to the Borrower for this purpose five (5) Business Days in advance.

9.2 Funds

Payments under the Finance Documents to the Bank shall be made for value on the due date at such times and in such manner as the Bank may specify to the Borrower as being customary at the time for the settlement of transactions in the currency of the relevant Advance.

9.3 Application

The Bank may apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied, provided that the Bank shall not apply such funds to the repayment or mandatory pre-payment of the Loan other than in accordance with the provisions of Clauses 5.1, 5.2, 5.3 and 6.2 above.

9.4 Currency

- (a) Amounts payable in respect of costs, expenses and Taxes and the like are payable in the currency in which they are incurred.
- (b) Any other amount payable under the Finance Documents is, except as otherwise provided in the Finance Documents, payable in Dollars.

9.5 Set-off and counterclaim

All payments made by the Borrower under the Finance Documents shall be made without set-off or counterclaim.

9.6 Non-Business Days

- (a) If a payment under the Finance Documents is due on a day which is not a Business Day, the due date for that payment shall instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal under the Finance Documents interest is payable on that principal at the rate prevailing on the original due date.

9.7 Partial payments

- (a) If the Bank receives a payment insufficient to discharge all the Advances then due and payable by the Borrower under the Finance Documents, the Bank shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
 - (i) **first**, in or towards payment of any unpaid fees, costs (including Mandatory Costs) and expenses of the Bank;
 - (ii) **secondly**, in or towards payment of any Finance Charges due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment of any Financing Principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment of any other sum due but unpaid under the Finance Documents.
- (b) Paragraph (a) above shall override any appropriation made by the Borrower.

10. TAXES

All payments by the Borrower under the Finance Documents shall be made without any deduction and free and clear of and without deduction for or on account of any Taxes, except to the extent that the Borrower is required by law to make payment subject to any Taxes. If any Tax or amounts in respect of Tax must be deducted, or any other deductions must be made, from any amounts payable or paid by the Borrower, or paid or payable by the Bank under the Finance Documents, the Borrower shall pay such additional amounts as may be necessary to ensure that the Bank receives a net amount equal to the full amount which it would have received had payment not been made subject to Tax or other deduction.

11. MARKET DISRUPTION

11.1 Absence of quotations

If a Reference Bank does not supply an offered rate by 1.00 p.m. two Business Days before the first day of an Interest Period, the applicable LIBOR shall, subject to Clause 11.2, be determined on the basis of the quotations of the remaining Reference Banks.

11.2 Market disruption

If in relation to any Interest Period the Bank determines (which determination shall be conclusive and binding) that:

- (a) by reason of circumstances affecting the London interbank market generally, adequate and fair means do not exist for ascertaining LIBOR or EURIBOR for that Interest Period; or
- (b) deposits in Dollars or Euros in the amount required for that Interest Period are not available to the bank in the London interbank market,

the Bank shall promptly notify the Borrower accordingly.

11.3 Alternative basis for outstanding Advances

If a notification under Clause 11.2 (Market Disruption) applies to an Advance which is outstanding, then, notwithstanding any other provision of this Agreement:

- (a) within five Business Days of receipt of the notification, the Borrower and the Bank shall enter into negotiations for a period of not more than 30 days with a view to agreeing to an alternative basis for determining the rate of interest or funding or both applicable to that Advance or any other Advances;
- (b) any alternative basis agreed under paragraph (a) above shall be binding on the Parties;
- (c) if no alternative basis is agreed, the Bank shall certify, on or before the last day of the Interest Period to which the notification relates, an alternative basis for maintaining the Advance;
- (d) any such alternative basis may include an alternative method of fixing the interest rate, alternative Interest Periods or alternative currencies but it must reflect the cost to the Bank of funding its participation in the Advance from whatever sources it may select plus the Margin; and
- (e) each alternative basis so certified shall be binding on the Borrower and the Bank and treated as part of this Agreement.

12. INCREASED COSTS

12.1 Increased costs

- (a) Subject to Clause 12.2 (Exceptions), the Borrower shall forthwith on demand which shall include a computation of the relevant amount in reasonable detail by the Bank pay to the Bank the amount of any increased cost incurred by it or any of its Affiliates as a result of:
- (i) the introduction of, or any change in, or any change in the interpretation or application of, any law or banking regulation; or
 - (ii) compliance with any regulation made after the date of this Agreement,
- (including any law or regulation relating to taxation (excluding income tax), monetary union, or reserve asset, special deposit, cash ratio, liquidity or capital adequacy requirements or any other form of banking or monetary control).
- (b) In this Agreement "**increased cost**" means:
- (i) an additional cost incurred by the Bank or any of its Affiliates as a result of it having entered into, or performing, maintaining or funding its obligations under, any Finance Document;
 - (ii) that portion of any additional cost incurred by the Bank or any of its Affiliates in making, funding or maintaining all or any advances comprised in a class of advances formed by or including the Bank's participations in any Advance made or to be made under this Agreement as is attributable to the Bank making, funding or maintaining those participations; and
 - (iii) the amount of any payment made by the Bank or any of its Affiliates, or the amount of any interest or other return foregone by the Bank or any of its Affiliates, calculated by reference to any amount received or receivable by the Bank or any of its Affiliates from any other Party under this Agreement.

12.2 Exceptions

Clause 12.1 (Increased costs) does not apply to any increased cost:

- (a) compensated for by the operation of Clause 10 (Taxes); or
- (b) attributable to any change in the rate of, or change in the basis of calculating, Tax on the overall net income of the Bank (or the overall net income of a division or branch of the Bank) imposed in the jurisdiction in which its principal office or Loan Office is situate.

13. ILLEGALITY

If it is or becomes unlawful in any jurisdiction for the Bank to give effect to any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Advance, then:

- (a) the Bank may notify the Borrower accordingly; and
- (b) (i) the Borrower shall forthwith prepay that Advance together with all other amounts payable by it to the Bank under the Finance Documents (including, without limitation, pursuant to Clause 21 (Indemnities)); and
- (ii) the Bank's undrawn Loan will forthwith be cancelled.

14. REPRESENTATIONS AND WARRANTIES

14.1 Representations and warranties

The Borrower makes the representations and warranties set out in this Clause 14 (Representations and Warranties) to the Bank, in reliance on which the Bank has entered into the Agreement.

14.2 Status

- (a) It is a company, duly organised and validly existing under the laws of the State of Israel; and
- (b) each member of the Group has the power to own its assets and carry on its business as it is being conducted.

14.3 Powers and authority

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

14.4 Legal validity

Each Finance Document to which it is or will be a party constitutes, or when executed in accordance with its terms will constitute, its legal, valid and binding obligation enforceable in accordance with its terms.

14.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not:-

- (a) conflict with any law or regulation or judicial or official order; or
- (b) conflict with the constitutional documents of any member of the Group; or

- (c) conflict with any document which is binding upon any member of the Group or any asset of any member of the Group.

14.6 No default

- (a) No Default is outstanding or might result from the making of any Advance; and
- (b) no other event is outstanding which constitutes (or with the giving of notice, passage of time, the making of any determination or fulfillment of any other applicable condition or any combination of the foregoing, might constitute) a default under any document which is binding on the Borrower or any member of the Group or any asset of the Borrower or any member of the Group.

14.7 Authorizations

All authorizations required in connection with the entry into, performance, validity and enforceability of the Finance Documents and the transactions contemplated by the Finance Documents have been obtained or effected and are in full force and effect.

14.8 Litigation

No material litigation, arbitration or administrative proceedings are current or, to the best of its knowledge, pending or threatened, which might, if adversely determined, have a Material Adverse Effect, which are not reflected in the Original Group Accounts.

14.9 Information

- (a) All information provided or delivered by it to the Bank was true, correct and complete in all material respects and not misleading in any material respect as of the date that it was delivered; and
- (b) all information provided or delivered by it to the Bank did not omit, as at the date that it was delivered, any information which, if disclosed, might adversely affect the decision of a financial institution considering whether to enter into this Agreement.

14.10 Financial statements

- (a) The audited and consolidated financial statements or the reviewed financial statements (as the case may be) of the Borrower and Plaza Centers most recently delivered to the Bank (which, at the date of this Agreement, are the Original Group Accounts):-
 - (i) have been prepared in accordance with GAAP, consistently applied; and
 - (ii) give a true and fair view of the financial condition of the Borrower and of Plaza Centers as of the date to which they were drawn up,

and there has been no material adverse change in the financial condition of the Borrower and of each of the Borrower Subsidiaries since the date on which those financial statements were drawn up.

14.11 Compliance

It is currently complying with applicable laws and regulations in all material respects and there is no event or circumstance which would be likely to cause it to cease to comply with such laws and regulations in any material respect.

14.12 Insurances

All Insurances are or, at the time they are required to be maintained or effected, will be, in full force and effect and so far as it is aware no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any insurer to avoid or otherwise reduce its liability under any policy relating to the Insurances.

14.13 Title and Ownership

The Borrower and each of its Funded Subsidiaries have good and marketable title to its assets (including without limitation, in the case of the Borrower, to any securities held by it in any Borrower Funded Subsidiary) free and clear of all Security Interests (other than Permitted Security Interests).

14.14 Status of security

Each Security Document confers the Security Interests it purports to confer over all of the assets referred to in it and those Security Interests:

- (a) are not subject to any prior or higher ranking or pari passu Security Interests (other than any Permitted Security Interests); and
- (b) are not void or liable to avoidance, due to the insolvency of the Borrower on the date of execution of the relevant Security Document, on liquidation or bankruptcy, composition or any other similar insolvency proceedings.

14.15 Pari passu ranking

The Borrower's obligations under the Finance Documents rank and will rank at least pari passu with all its other unsecured obligations, except for obligations mandatorily preferred by law applying to companies generally.

14.16 Indebtedness

The Borrower does not have any outstanding indebtedness to any of its shareholders, to any holding company of its shareholders and to any other member of the Group other than indebtedness in favour of the Shareholder which, in the aggregate, does not exceed US\$1,000,000 (one million US dollars).

14.17 Taxes on payments

All amounts payable by the Borrower under the Finance Documents shall be made free and clear of, and without deduction for, or on account of, any Tax.

14.18 Stamp duties

The Borrower shall bear and pay all stamp or registration duty or similar taxes or charges which shall be payable in respect of any Finance Document.

14.19 Immunity

- (a) The execution by the Borrower of each Finance Document constitutes, and its exercise of its rights and performance of its obligations under each Finance Document will constitute, private and commercial acts done and performed for private and commercial purposes; and
- (b) the Borrower will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in the State of Israel or any other jurisdiction in relation to any Finance Document.

14.20 Jurisdiction/governing law

The Borrower's:

- (a) irrevocable submission under Clause 30 (Jurisdiction) to the jurisdiction of the courts of Israel;
 - (b) agreement that this Agreement is governed by Israeli law; and
 - (c) agreement not to claim any immunity to which it or its assets may be entitled,
- are legal, valid and binding under the laws of Israel.

14.21 Times for making representations and warranties

The representations and warranties set out in this Clause 14:

- (a) are made by the Borrower on the date of this Agreement; and
- (b) are deemed to be repeated by the Borrower on each day thereafter with reference to the facts and circumstances then existing.

15. UNDERTAKINGS

15.1 Duration

The undertakings in this Clause 15 (Undertakings) remain in force from the date of this Agreement for so long as any amount is or may be outstanding under this Agreement. All of those undertakings (and any undertakings or restrictions in any other clause of the Finance Documents) are cumulative, and accordingly none of them shall (except to the extent expressly stated) be limited by any exception to any other undertaking or by implication from the terms of any other undertaking.

15.2 Financial Information

The Borrower shall supply to the Bank:

- (a) as soon as the same are available (and in any event within 90 days of the end of each of its financial years), the audited consolidated accounts and financial reports of the Borrower and Plaza Centers for that financial year.
- (b) as soon as the same are available (and in any event within 60 days of the end of the each quarter of each of its financial years) reviewed interim financial reports of the Borrower for that quarter.
- (c) as soon as the same are available (and in any event within 60 days of the end of each quarter) reviewed financial statements for that quarter of Plaza Centers (including a balance sheet, statements of income and cash flow);
- (d) as soon as the same are available, the statutory accounts of Plaza Centers for each financial year.
- (e) together with the accounts specified in paragraph (a) and (b) above, a certificate from the auditors of the Borrower:
 - (i) establishing compliance with Clause 15.21 (Financial covenants) which certificate shall, if the Bank requests, also set out in reasonable detail computations establishing such compliance; and
 - (ii) confirming that the accounts have been prepared in accordance with Israeli GAAP and Securities Law Regulations..
- (f) within 60 days of a written request by the Bank (which shall be delivered not more than once in any two consecutive calendar years, unless the Bank considers that an event has occurred requiring a greater frequency), a valuation addressed to the bank (produced by a third party acceptable to the Bank) of the assets of the Borrower.

15.3 Other Information

- (a) The Borrower shall supply to the Bank:

- (i) all documents despatched by it to its shareholders (or any class of them) or by it to its creditors (or any class of them) at the same time as they are despatched;
 - (ii) copies of all "Immediate Reports" issued by it pursuant to Section 30 of the Securities Regulations (Periodic and Immediate Reports); 1970;
 - (iii) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings of a material nature relating to it which are current, threatened or pending, and, together, in each case, with details of how it proposes to conduct the litigation, arbitration or proceedings or otherwise resolve the dispute in question;
 - (iv) reasonably promptly, and in any case, within 20 Business Days such further information in the possession or control of the Group regarding its financial condition and operations as the Bank may reasonably request;
 - (v) forthwith, details of any event of which it is aware which may have a Material Adverse Effect; and
 - (vi) promptly, upon the earlier of (A) the signing of a term sheet for a Refinancing by a Borrower Funded Subsidiary or (B) the finalisation of commercial terms for such Refinancing by a Borrower Funded Subsidiary (such notification, for the avoidance of doubt, shall not in itself constitute a Trigger Event).
- (b) In the event that an Event of Default has occurred, the Borrower shall allow the Bank appropriate and reasonable access to its records and accounts.

15.4 Notification of Default

The Borrower shall notify the Bank of :

- (a) any Default (and the steps, if any, being taken to remedy it);
 - (b) any event of default or potential event of default arising under any loan agreement entered into by any Subsidiary,
- immediately upon its becoming aware thereof.

15.5 Compliance certificates

The Borrower shall supply to the Bank promptly at any time, if the Bank so requests, a certificate signed by two of its senior officers certifying that no Default is outstanding or, if a Default is outstanding, specifying the Default and the steps, if any, being taken to remedy it.

15.6 Authorisations

The Borrower shall promptly obtain, maintain and comply with the terms of any authorisation required at the relevant time under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.

15.7 Pari passu ranking

The Borrower shall procure that its obligations under the Finance Documents do and will rank at least pari passu with all its other present and future unsecured obligations, except for obligations mandatorily preferred by law applying to companies generally.

15.8 Negative pledge

- (a) The Borrower shall not and shall procure that no Borrower Funded Subsidiary shall create or permit to subsist any Security Interest on any of its present or future assets.
- (b) Paragraph (a) does not apply to any Permitted Security Interest.
- (c) If the Borrower creates or permits to subsist any Security Interest on any of its assets contrary to paragraph (a) above, all of the obligations of the Borrower under this Agreement shall, to the extent permissible under applicable law, automatically and immediately be secured upon the same assets, ranking at least pari passu with the other obligations secured on those assets.

15.9 Transactions similar to security

- (a) The Borrower shall not, without the prior consent of the Bank:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby it is or may be leased to or re-acquired or acquired by a member of the Group or any of its related entities; or
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms, except for the discounting of bills or notes in the ordinary course of trading,

in circumstances where the transaction is entered into primarily as a method of raising finance.
- (b) Paragraph (a) does not apply to Permitted Security Interests.

15.10 Borrowings

The Borrower shall not incur any Financial Indebtedness to any Subsidiary unless such Subsidiary has first signed a Subordination Agreement in favour of the Bank, substantially in the form of Schedule 4 (Subordination Agreement).

15.11 Disposals

- (a) The Borrower shall not, either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily, sell, transfer, grant or lease or otherwise dispose of all or any substantial part of the assets of the Business (including tax losses).
- (b) Paragraph (a) does not apply to:
 - (i) disposals made in the ordinary course of business of the disposing entity; or
 - (ii) disposals of assets in exchange for other assets comparable or superior as to type, value and quality;
 - (iii) disposals of obsolete or surplus assets no longer required for the relevant business;
 - (iv) the payment of cash as consideration for the acquisition of any asset or service;
 - (v) Permitted Security Interests; or
 - (vi) any other disposal approved by the Bank (such approval not to be unreasonably withheld).

15.12 Mergers and acquisitions

The Borrower shall not, and shall procure that no other member of the Business Group will enter into any amalgamation, demerger, merger or reconstruction.

15.13 Compliance with laws and payment of taxes

- (a) The Borrower shall comply (and shall procure that each other member of the Group complies) with all laws and regulations applicable to it to the extent that failure to do so would have a Material Adverse Effect.
- (b) The Borrower shall:
 - (i) file, or procure the filing of, all tax and informational returns that are required to be filed by it in any jurisdiction; or
 - (ii) pay all its taxes when due, except to the extent the taxes are contested in good faith and by appropriate means, and a reserve reasonably regarded as adequate has been set aside for payment of those taxes.

15.14 Change of business

The Borrower shall procure that no other member of the Business Group will engage in any business or activities other than the Business and any business incidental to its

implementation, other than with the approval of the Bank (such approval not to be unreasonably withheld).

15.15 Share capital

The Borrower shall not, without the prior consent of the Bank:

- (a) purchase, cancel or redeem any of its share capital or that of Plaza Centers (other than consequent upon exercise of the EBRD Conversion Option); or
- (b) issue any further securities (including consequent upon exercise of the EBRD Conversion Option) if as a result of such the Shareholder would hold, directly or indirectly, less than 50.1% (fifty and one-tenth of one per cent) of the issued share capital of the Borrower.

15.16 Distributions

- (a) Except as required by law, the Borrower shall not allow, nor shall it allow any member of the Business Group to allow, any block or impediment to be placed on the ability of the Borrower or any member of the Business Group to declare or pay any Distribution, other than pursuant to the terms of senior construction facilities taken by any subsidiary in relation to a Project, without the prior written consent of the Bank.
- (b) Provided that no Event of Default has occurred, Borrower shall not be obliged to Distribute any Free Funds generated by the Projects and/or the Business.

15.17 Insurances

The Borrower shall, and shall procure that each member of the Group shall, maintain insurance with financially sound and reputable insurers with respect to its assets of an insurable nature against such risks and in such amounts as are normally maintained by persons carrying on the same or a similar class of business.

15.18 Conduct of business

The Borrower shall:

- (a) in all material respects conduct its business in a reasonable and prudent manner in accordance with all applicable laws and regulations and the terms of the Finance Documents; and
- (b) meet all of its material obligations as they fall due; and
- (c) promptly perform its material obligations, and enforce its material rights under each agreement to which it is a party, to the extent that failure to do so would have Material Adverse Effect.

15.19 Use of Proceeds

The Borrower shall apply the proceeds of the Advances wholly and exclusively for the purposes set out in Clause 3 (Purpose).

15.20 Amendments and Agreements

- (a) The Borrower shall not, directly or indirectly, terminate, cancel or suspend, or permit or consent to any termination, cancellation or suspension of, or enter into or consent to or permit an assignment of the rights or obligations of any party to, any material agreement to which it is a party and pertaining to the Business without receiving the prior written consent of the Bank.
- (b) The Borrower shall not, directly or indirectly, amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of, any of the provisions of, or give any consent under, any material agreement to which it is a party and pertaining to the Business without receiving the prior written consent of the Bank.

15.21 Financial Covenants

- (a) The Borrower shall procure that Adjusted Shareholder's Equity shall at all times represent at least 20% (twenty per cent) of the Adjusted Balance Sheet Value and shall provide an auditor's statement to this effect with each audited or reviewed consolidated financial statements of the Borrower furnished to the Bank.

In this Clause 15.21(a):

"Adjusted Shareholders Equity" means as appearing in the consolidated balance sheet plus Capital Reserves.

"Capital Reserves" means capital reserves of: (i) Euro 35,000,000 (thirty five million Euros) resulting from the acquisition by Elscint Ltd of BEA Hotels N.V. from a Subsidiary of the Shareholder in September 1999; and (ii) Euro 29,500,000 (twenty nine million five hundred thousand Euros) resulting from the acquisition by Elbit Ultrasound (Netherlands) B.V. of Plaza Centers from BEA Holdings N.V., in September 2000, both:

- (i) as linked to the Dutch CPI from a base index of 109.4 (with regard to (i)) and 112.65 (with regard to (ii));
- (ii) as converted from Euro to NIS at the Bank's Spot Rate of Exchange; and
- (iii) as reduced from time to time.

"Dutch CPI" means the consumer price index published by the Central Bureau voor de Statistiek in The Netherlands (the "*Bureau*"), including the same index even if published by any other government institution and also including any official index

replacing the same, whether based on the same data on which the existing index is based or not. If another index replaces the existing index, the Bureau shall determine the conversion ratio between them, and if the Bureau does not determine the conversion ratio between them within three (3) months of the publication of the other index, it shall be reasonably determined by the Bank in consultation with economic experts.

"Adjusted Balance Sheet Value" means the total value of the balance sheet as shown in the latest published audited or reviewed consolidated balance sheet of the Borrower less cash balances, deposits and negotiable instruments plus Capital Reserves.

- (b) (i) The Borrower shall procure that its Net Operating Profit (before deductions for (A) depreciation and amortisation on items forming part of the Net Operating Profit; and (B) research and development costs relating to Insightec, all as detailed in the Borrower's audited and reviewed accounts) at 30 June 2004 (on an annualized basis) and at 31 December 2004 (for the financial year 2004) shall be not less than NIS 90 million (ninety million New Israeli Shekels).
- (ii) The Borrower shall procure that its Net Operating Profit (before deductions for depreciation and amortisation on items forming part of the Net Operating Profit and (B) fifty per cent (50%) of the research and development costs relating to Insightec, all as detailed in the Borrower's audited and reviewed accounts) shall at 30 June 2005 (on an annualized basis) and at 31 December 2005 (for the financial year 2005) shall not less than NIS 100 million (one hundred million New Israeli Shekels).
- (iii) The Borrower shall procure that its Net Operating Profit (before deductions for depreciation and amortisation relating to the Net Operating Profit as detailed in the Borrower's audited and reviewing accounts) shall at 30 June 2006 and on each 30 June up to the Final Maturity Date (on an annualized basis) and at 31 December 2006 and each 31 December thereafter (for the financial year ending on such date) shall be not less than NIS 120 million (one hundred and twenty million New Israeli Shekels).

"Net Operating Profit" means net operating profit, before finance income or expenses, as appearing in the audited or reviewed consolidated financial statements of the Borrower.

- (c) The Borrower shall procure that the Aggregate Net Value of all the assets of Plaza Centers, less all liabilities of Plaza Centers and its subsidiaries (including, inter alia, shareholders loans) shall :
 - (A) on the date hereof, be no less than \$90,000,000 (ninety million United States Dollars);
 - (B) on June 30, 2004, be no less than \$100,000,000 (one hundred million United States Dollars); and

- (C) on June 30, 2005 be no less than \$125,000,000 (one hundred and twenty five million US Dollars).

“Aggregate Net Value” shall be as determined by a third party appraiser acceptable to the Bank in a written valuation addressed to the Bank (**“Net Value Appraisal”**). Borrower shall furnish the Net Value Appraisal determining the Aggregate Net Value on the date hereof by not later than a date 120 (one hundred and twenty) days following the date hereof. Borrower shall furnish the Net Value Appraisal determining the Aggregate Net Value on June 30, 2004 and June 30, 2005 respectively by not later than 90 (ninety) days following the relevant determination date.

- (d) These covenants shall be calculated semi-annually on the basis of the latest published audited and reviewed consolidated financial statements of the Borrower provided to the Bank pursuant to this Agreement. On each 30 June commencing on 30 June 2004, the Net Operating Profit shall be multiplied by two (2) in order to achieve an annualized figure.
- (e) The financial covenants set forth in this Section 15.21 shall not apply at such time as the following circumstances shall all exist:
- (i) the Net Loan Amount is less than \$30,000,000 (thirty million US Dollars);
 - (ii) the total amount outstanding under the Europe Israel Loan Agreement is less than \$30,000,000 (thirty million US Dollars); and
 - (iii) there has been no Event of Default under this Agreement.

15.22 EBRD

- (a) The Borrower shall procure that, without the Bank’s prior consent:
- (i) the EBRD Conversation Option shall provide the right for EBRD to acquire no more than ten percent (10%) of the issued share capital of Plaza Centers on the basis of a company valuation of the total assets (less all bank debt) of Plaza Centers of not less than US\$275,000,000 (two hundred and seventy five million US Dollars); and
 - (ii) the EBRD Equity Financing Facility shall require repayments of principal commencing no earlier than four (4) years after the grant of the EBRD Equity Financing Facility.
- (b) The Borrower shall, unless otherwise agreed by the Bank, provide to the Bank provide copies of the definitive documentation setting out the provisions of the EBRD Conversion Option and EBRD Equity Financing Facility at least ten (10) days prior to the execution thereof.

15.23 Management Fees

The Borrower shall procure that any management fees paid by any member of the Business Group to any entity other than:

- (a) a Holding Subsidiary or any of its Subsidiaries;
- (b) the Borrower or any of its Subsidiaries; or
- (c) a Holding Company of the Borrower or any of its Subsidiaries,

shall be reasonable and in any event shall be in an amount not exceeding 5% (five per cent) of: (a) the development, financing and construction costs of any project prior to completion which is being executed by such member of the Business Group; or (b) the gross revenues of such member of the Business Group .

16. DEFAULT

16.1 Events of Default

Each of the events set out in Clauses 16.2 to 16.18 (inclusive) of this Clause 16 is an Event of Default (whether or not caused by any reason whatsoever outside the control of the Group or any other person).

16.2 Non-payment

The Borrower does not within three (3) Business Days of the due date pay any amount payable by it under the Finance Documents at the place at and in the currency in which it is expressed to be payable.

16.3 Breach of other obligations

- (a) The Borrower does not comply with any provision under any of Clauses 15.4 (Notification of Default), 15.7 (Pari Passu Ranking), 15.8 (Negative Pledge), 15.9 (Transactions Similar to Security), 15.10 (Borrowings), 15.11 (Disposals), 15.12 (Mergers and acquisitions), 15.14 (Change of business), 15.16 (Distributions), 15.17 (Insurances), or 15.22 (EBRD).
- (b) Any member of the Business Group does not comply with any provision of the Finance Documents (other than those referred to in Clauses 16.2 and 16.3(a)) and, if capable of remedy, that breach is not remedied within 10 (ten) days of the earlier of receipt of notice from the Bank specifying the breach and the member of the Business Group first becoming aware of the failure.

16.4 Misrepresentation

A representation, warranty or statement made or repeated in or in connection with any Finance Document or in any document delivered by or on behalf of any member of the Group under or in connection with any Finance Document is incorrect in any material respect when made or deemed to be made or repeated and shall continue to

be incorrect for a period of ten (10) days from the date such representation or warranty is or is deemed to have been made or repeated.

16.5 Legal Validity

Any Finance Document is not or ceases to be a valid, binding and enforceable obligation of, or is repudiated by, any member of the Business Group or becomes void or unenforceable.

16.6 Cross-default

- (a) (i) Any Financial Indebtedness of the Borrower is not paid when due or within the lesser of:
 - (A) any originally applicable grace period; and
 - (B) seven (7) Business Days;
- (ii) An event of default howsoever described (or any event which with the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition or any combination of the foregoing would constitute such an event of default) occurs under any document relating to such Financial Indebtedness of the Borrower;
- (iii) Any Financial Indebtedness of the Borrower becomes prematurely due and payable or is placed on demand as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (iv) Any commitment for, or underwriting of, any such Financial Indebtedness of the Borrower is cancelled or suspended as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (v) Any Security Interest securing any Financial Indebtedness over any asset of the Borrower becomes enforceable.
- (b) (i) Any Financial Indebtedness of the Group other than the Borrower is not paid when due or within the lesser of:
 - (A) any originally applicable grace period; and
 - (B) seven (7) Business Days;
- (ii) An event of default howsoever described (or any event which with the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition or any combination of the foregoing would constitute such an event of default) occurs under any document relating to such Financial Indebtedness of the Group other than the Borrower;

- (iii) Any Financial Indebtedness of the Group other than the Borrower becomes prematurely due and payable or is placed on demand as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (iv) Any commitment for, or underwriting of, any such Financial Indebtedness of the Group other than the Borrower is cancelled or suspended as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (v) Any Security Interest securing any Financial Indebtedness over any asset of the Group other than the Borrower becomes enforceable;

provided that where such event relates to a member of the Group (other than the Borrower or a Holding Subsidiary) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

- (c) An event of default occurs pursuant to terms of the Elbit Ultrasound Loan Agreement.

16.7 Insolvency

- (a) Borrower or any Holding Subsidiary:
 - (i) is, or is deemed unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or
 - (iii) by reason of financial difficulties, begins negotiations with one or more of its creditors with a view to the readjustment or rescheduling of any of its indebtedness.
- (b) In the event that any member of the Group other than the Borrower or a Holding Subsidiary:
 - (i) is, or is deemed unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or
 - (iii) by reason of financial difficulties, begins negotiations with one or more of its creditors with a view to the readjustment or rescheduling of any of its indebtedness.

provided that where such event relates to a member of the Group other than the Borrower or a Holding Subsidiary such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.8 Insolvency proceedings

- (a) Any step (including petition, proposal or convening a meeting) is taken with a view to a composition, assignment or arrangement with any creditors of the Group; or
- (b) a meeting of members of any member of the Group is convened for the purpose of considering any resolution for (or to petition for) its winding-up or for its administration or any such resolution is passed; or
- (c) any person presents a petition for the winding-up or for the administration of any member of the Group which is not withdrawn or set aside within twenty-one (21) days; or
- (d) an order for the winding-up or administration of any member of the Group is made;

provided that where such event relates to a member of the Group (other than the Borrower or a Holding Subsidiary) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.9 Appointment of receivers and managers

- (a) Any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or the like is appointed in respect of any member of the Group or any material part of its assets which is not withdrawn or set aside within twenty-one (21) days; or
- (b) the directors of any member of the Group request the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or the like; or
- (c) any other steps are taken to enforce any Security Interest over any material part of the assets of any member of the Group;

provided that where such event relates to a member of the Group (other than the Borrower or a Holding Subsidiary) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.10 Creditors' process

Any attachment, sequestration, distress or execution affecting any material asset of any member of the Group is issued and not discharged within ninety (90) days or such shorter period as may render such asset liable to forfeiture, seizure or sale, provided that where such event relates to a member of the Group (other than the Borrower or a Holding Subsidiary) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.11 Cessation of business

- (a) The Borrower or a Holding Subsidiary ceases, or threatens to cease, to carry on all or a substantial part of its business.
- (b) Any other member of the Group ceases, or threatens to cease, to carry on all or a substantial part of its business, provided that where such event relates to a member of the Group (other than the Borrower or a Holding Subsidiary) such event shall only constitute an Event of default if it has a Material Adverse Effect on Borrower.

16.12 Illegality

It becomes unlawful for any member of the Group to perform any of its obligations under the Finance Documents.

16.13 Effectiveness of security

Any Security Document entered into by any member of the Group is not or ceases to be effective or is alleged by any such person to be ineffective for any reason.

16.14 Change in control

There is a change of control without the prior written consent of the Bank, as a result of which:

- (a) the Shareholder holds, directly or indirectly, less than fifty and one-tenth percent (50.1%) of the issued share capital of the Borrower; or
- (b) the Borrower holds, directly or indirectly, less than one hundred percent (100%) of the issued share capital of any Holding Subsidiary (save in consequence of the exercise of the EBRD Conversion Option).

16.15 Abandonment or Nationalisation

- (a) The Group abandons any of its material assets.
- (b) Any government or any Agency of that government takes, or states officially that it proposes to take, any step with a view to the seizure, expropriation, nationalisation or acquisition (whether compulsory or otherwise, in whole or in part, and whether or not for fair compensation) of any member of the Group or any of its assets, in a manner or to an extent that has a Material Adverse Effect.

16.16 Material Adverse Effect

Any event or series of events occurs, which, in the opinion of the Bank, is likely to have a Material Adverse Effect.

16.17 Registration for Trade

- (a) The shares of the Borrower are delisted or suspended for trade on the Tel Aviv Stock Exchange or NASDAQ Stock Exchange other than for reasons affecting such exchange or the shares traded therein generally, for a period exceeding 10 Banking Days.
- (b) The provisions of sub-clause (a) above shall not be applicable in the event of a voluntary de-listing carried out with the consent of the Bank.

16.18 Acceleration

On and at any time after the occurrence of an Event of Default, the Bank may, by notice to the Borrower:

- (a) cancel the Loan; and/or
- (b) demand that all or part of the Advances, together with accrued interest and all other amounts accrued under the Finance Documents (including without limitation pursuant to Clause 21 (Indemnities)) be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) demand that all or part of the Advances together with accrued interest and all other amounts accrued under the Finance Documents (including without limitation pursuant to Clause 21 (Indemnities)) be payable on demand, whereupon they shall immediately become payable on demand by the Bank; and/or
- (d) require the Borrower to procure that all Plaza Centers Loans are forgiven and that Plaza Centers has no further obligations or liabilities thereunder.

17. ACCOUNTS

17.1 Opening of Accounts

- (a) So long as any Advance remains outstanding, the Borrower shall maintain in its own name at the relevant branch of the Bank the following accounts, which shall be charged by way of a first ranking fixed charge in favour of the Bank as security:

- (i) the Loan Account; and
- (ii) the Revenue Account.

- (b) The relevant branch of the Bank is, at the date of this Agreement, the Loan Office.

The Bank may change the place of the relevant branch (or the relevant branch to apply to a particular Account) by notice to the Borrower and any other party that is required to pay sums into such Account.

- (c) The following provisions of this Clause shall govern the operation of the Accounts, provided that:
- (i) the Borrower shall also complete the Bank's standard account mandate form for each Account; and
 - (ii) the Bank's standard terms and conditions, if any, applicable to similar accounts maintained with the Bank and in force from time to time shall apply to the operation of the Accounts and the rights and obligations of the Bank and the Borrower in relation thereto (subject to any exceptions specifically agreed, in writing, between Borrower and the Bank).

Should there be any conflict between the provisions of this Agreement and such standard terms and conditions, then this Agreement shall prevail. The Bank shall send the Borrower a copy of any new set of standard terms and conditions promptly following their issuance.

- (d) The Bank and the Borrower may agree that a further account(s) is/are required to deal with any category of payments or receipts not contemplated by the following provisions of this Clause 17 (Accounts). In such case, the Bank and the Borrower shall agree upon procedures and rules to govern the operation of such further account or accounts in a supplement to this Clause and, once agreed, such supplement shall be deemed to form part of this Clause 17 (Accounts). The Bank shall send a copy of any such supplement to the Borrower.

17.2 Loan Account

- (a) No sums shall be paid into the Loan Account without the prior agreement of the Bank.
- (b) Whenever the Borrower requires to make a withdrawal from the Loan Account, it shall give to the Bank not less than three (3) Business Days' notice of such withdrawal in the form of the Disbursement Request (or in such other form as the Bank shall require). Any such withdrawal may only be for the purposes of:
- (i) funding Equity Contributions in terms of Clause 3 above; or
 - (ii) as the Bank may otherwise permit in writing.
- (c) Each Disbursement Request shall specify the bank and account number of the payee to whom such payment is made and the Bank shall transfer the sum in question to such account.

17.3 Revenue Account

The Borrower shall procure that all Revenues which are required in order to execute a mandatory prepayment (in accordance with the terms of Clause 6.2 above) are paid directly to the Revenue Account.

17.4 General provisions relating to Accounts

- (a) The Borrower undertakes to ensure that no Account is closed without the prior written consent of the Bank and the Borrower.
- (b) Without prejudice to any other rights of the Bank under the Financing Documents, if at any time a Default has occurred or is continuing, the Borrower shall not make any withdrawals from the Accounts (other than in order to repay Financing Principal or Financing Charges due to the Bank), without the prior written consent of the Bank.
- (c) Each Account shall earn interest at such rate(s) as may be agreed from time to time by the Borrower and the Bank. All interest earned on the balance standing to the credit of an Account shall be credited to the Account in question and the Bank is irrevocably authorised and instructed so to credit such interest.
- (d) No Account may go into overdraft and the Borrower shall not issue an instruction with respect to an Account, and the Bank shall not comply with an instruction, to the extent that it would cause the relevant Account to go into overdraft.
- (e) The Borrower shall not create or permit to subsist any Security Interest on all or any part of the Accounts, other than any Security Interests created by the Security Documents, nor assign transfer or otherwise dispose of all or any part of its right or title to or interest in the Accounts.
- (f) The Borrower irrevocably and unconditionally authorises and instructs the Bank to act upon instructions received by it from the Borrower and to make any other appropriations, payments and transfers into or between any of the Accounts which this Agreement expressly provides should be made by the Bank.
- (g) To the extent that the Borrower gives any instructions (but only to this extent), the Bank acts as agent for the Borrower.
- (h) No person other than the Bank and/or the Borrower may give any instructions or requests to the Bank for any payments, transfers or withdrawals from any of the Accounts.
- (i) No amounts may be withdrawn or transferred from any of the Accounts, and the Borrower may not give any instructions in relation to any of the Accounts, except in accordance with the express terms of this Agreement.
- (j) The Borrower shall ensure that all moneys paid to it from an Account in response to any instructions given by it are applied only in discharging the obligations in respect of which they were paid from the relevant Account (or as otherwise permitted under this Agreement).
- (k) The Bank:
 - (i) shall be entitled to act in reliance on any certificate or document delivered to it in support of any of the matters contemplated by this Clause 20 (Accounts); and

- (ii) shall not be obliged to enquire into any of the underlying transactions or to verify any of the contents of any such certificate or document.
- (l) The Borrower acknowledges that neither any insufficiency of funds in the Accounts (or any of them), nor any inability to apply any funds in the Accounts (or any of them) against any or all amounts owing under this Agreement, shall at any time limit, reduce or otherwise affect the Borrower's payment obligations under this Agreement.
- (m) If on any date the Bank is requested or required to make one or more payments from any of the Accounts (not being a sum payable to the Bank) and there is an insufficient balance on that Account to meet those payments in full, then the Bank may select in which order and to what extent such payments shall be made, but without liability or responsibility as a consequence of such application.

18. SECURITY

18.1 Effective Date

The Borrower shall ensure that the security arrangements set forth in this Clause 18 (Security) are in effect and perfected on the date of signing of this Agreement, unless otherwise agreed in writing by the Bank.

18.2 Charges

The Charges and Charge over Accounts shall serve as security for the Loan provided, however, that the recourse of the Bank shall not be limited to such security.

18.3 Pledge of Elscint Shares

The Bank shall agree to release the pledge over 615,000 ordinary shares of Elscint Ltd. upon receipt of a prepayment of principal of Tranche A in the amount of US\$ 3,000,000 (three million US Dollars). This prepayment shall be in addition to any payment due pursuant to Clause 5.2 (Tranche A) or Clause 6.2 (Mandatory Prepayment). The provisions of this Clause 18.3 do not derogate from the provisions of Clause 15.8 (Negative Pledge) other than in the event that such prepayment results from a refinancing of such US\$3,000,000 which is conditioned upon the granting of a pledge over the 615,000 ordinary shares of Elscint Ltd.

19. FEES AND EXPENSES

19.1 Arrangement Fee

The Borrower shall pay to the Bank an arrangement fee (which shall not be paid out of Advances) in the amount of \$100,000 (one hundred thousand US Dollars) on the signing of this Agreement.

19.2 Initial and special costs

The Borrower shall forthwith on demand pay the Bank the amount of all reasonable costs and expenses (including legal fees in a pre-agreed amount) incurred by the Bank in connection with:

- (a) the drafting, negotiation and closing of:
 - (i) the Finance Documents and any other documents referred to in this Agreement; and
 - (ii) any other Finance Document executed after the date of this Agreement; and
- (b) the examination of any future Project in respect of which an Equity Contribution is to be made; and
- (c) any amendment, waiver, consent or suspension of rights (or any proposal for any of the foregoing) requested by or on behalf of the Borrower and relating to a Finance Document or a document referred to in any Finance Document.

19.3 Enforcement costs

The Borrower shall forthwith on demand pay to the Bank the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

19.4 Retention

The Bank may apply amounts held in any Account toward payment in full of any fees, costs and expenses referred to in this Clause 19 (Expenses).

19.5 VAT

Any fee or expense referred to in this Clause 19 (Fees and Expenses) is exclusive of any applicable value added tax or any other tax which might be chargeable in connection with that fee or expense. If any value added tax or other tax is so chargeable, it shall be paid by the Borrower at the same time as it pays the relevant fee or expense.

20. STAMP DUTIES

The Borrower shall pay, and forthwith on demand indemnify the Bank against any liability it incurs in respect of, any stamp, registration or similar tax which is or becomes payable in connection with the entry into, registration, recording, performance or enforcement of any Finance Document and any ancillary documentation relating thereto.

21. INDEMNITIES

21.1 Currency indemnity

- (a) If the Bank receives an amount in respect of the Borrower's liability under the Finance Documents or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "**contractual currency**") in which the amount is expressed to be payable under the relevant Finance Document:
- (i) the Borrower shall indemnify the Bank as an independent obligation against any loss or liability arising out of or as a result of the conversion;
 - (ii) if the amount received by the Bank, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency, the Borrower shall forthwith on demand pay to the Bank an amount in the contractual currency equal to the deficit; and
 - (iii) the Borrower shall forthwith on demand pay to the Bank any exchange costs and taxes payable in connection with any such conversion.
- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

21.2 Other indemnities

The Borrower shall forthwith on demand indemnify the Bank against any loss or liability which the Bank incurs as a consequence of:

- (a) the occurrence of any Default;
- (b) the operation of Clause 16.21 (Acceleration);
- (c) any payment of principal or an overdue amount being received from any source otherwise than on the last day of a relevant Interest Period or other Interest Period provided for in Clause 8.3 (Default Interest) relative to the amount so received; or
- (d) (other than by reason of negligence or default by the Bank) an Advance not being made after the Borrower has delivered a request for the Advance, or an Advance (or part of the Advance) not being prepaid in accordance with a notice of prepayment.

The Borrower's liability in each case includes any loss of margin or other loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document, any amount repaid or prepaid or any Advance.

22. EVIDENCE AND CALCULATIONS

22.1 Accounts

Accounts maintained by the Bank in connection with this Agreement are prima facie evidence of the matters to which they relate.

22.2 Certificates and determinations

Any certification or determination by the Bank of a rate or amount under the Finance Documents is, in the absence of manifest error, prima facie evidence of the matters to which it relates.

22.3 Interest Calculations

Interest accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days.

23. AMENDMENTS AND WAIVERS

23.1 Amendments

Any term of the Finance Documents may be amended or waived with the agreement of the Borrower and the Bank.

23.2 Waivers and Remedies Cumulative

The rights of the Bank under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

24. CHANGES TO THE PARTIES

24.1 Transfers by Borrower

The Borrower may not assign, transfer, novate or dispose of any of, or any interest in, its rights and/or obligations under the Finance Documents.

24.2 Transfers by Bank

- (a) The Bank may at any time assign, transfer or novate all or any part of the Loan and/or all or any of its rights and/or obligations under this Agreement to another bank, financial institution or securitisation vehicle ("**Assignee Lender**"). If, as a result of any such assignment, transfer or novation, the Bank or its Affiliate will no longer

remain responsible under this Agreement, such assignment, transfer or novation shall be subject to the prior written consent of the Borrower (which consent shall not be unreasonably withheld).

- (b) The Borrower shall execute and do all such transfers, assignments, novations, assurances, acts and things as the Bank may require for perfecting and completing any such assignment, transfer or novation, and releasing the Bank from and imposing on the Assignee Lender the Bank's obligations under this Agreement to the extent the same are transferred, assigned or novated. All agreements, representations and warranties made in this agreement shall survive any assignment made pursuant to this clause and shall also inure to the benefit of all Assignee Lenders.

24.3 Reference Banks

If a Reference Bank ceases to exist, the Bank shall (in consultation with the Borrower) appoint another bank or financial institution to replace that Reference Bank.

25. DISCLOSURE OF INFORMATION

Subject to all applicable laws and regulations, the Bank may disclose to its Affiliates or any person with whom it is proposing to enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement:

- (a) a copy of any Finance Document; and
- (b) any information which the Bank has acquired under or in connection with any Finance Document.

26. SET-OFF

The Bank may set off any matured obligation owed by the Borrower under the Finance Documents (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off an amount estimated by it in good faith to be the amount of that obligation.

27. SEVERABILITY

If a provision of any Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the validity or enforceability in that jurisdiction of any other provision of the Finance Documents; or

- (b) the validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents.

28. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

29. NOTICES

29.1 Giving of notices

All notices or other communications under or in connection with the Finance Documents shall be given in writing and, unless otherwise stated may be made by letter or facsimile. Any such notice will be deemed to be given as follows:

- (a) if by letter, when delivered personally or on actual receipt; and
- (b) if by facsimile, when received in legible form.

However, a notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

29.2 Addresses for notices

- (a) The address and facsimile number of the Borrower are:

Elbit Medical Imaging Limited
13 Moses Street
Tel Aviv 67442

Facsimile: +972 3 6953080
Attention: Shimon Yitzhaki, President

or such other as the Borrower may notify to the Bank by not less than five Business Days' notice.

- (b) The address and facsimile number of the Bank are:

Bank Hapoalim B.M.
Head Office, Corporate Business Division
41-45 Rothschild St.
Tel-Aviv, 65874
Israel

Facsimile: +972 3 567 3849
Attention: Manager of the Infrastructure, Tourism and Trade Finance.

with a copy to:

Herzog, Fox & Neeman
Asia House
4 Weizman Street
Tel Aviv

Facsimile: +972-3-696-6464
Attention: Alan Sacks

or such other as the Bank may notify to the Borrower by not less than five Business Days' notice.

30. JURISDICTION

30.1 Submission

The Borrower irrevocably agrees for the benefit of the Bank that any legal action arising out of or relating to any Finance Document may be brought in the courts of Tel-Aviv Jaffa and irrevocably submits to the non-exclusive jurisdiction of such courts and, without prejudice to the foregoing, further submits to the non-exclusive jurisdiction of such other courts as shall be designated by the Bank as being an appropriate forum.

31. WAIVER OF IMMUNITY

The Borrower irrevocably and unconditionally:

- (a) agrees that if the Bank brings proceedings against it or its assets in relation to a Finance Document, no immunity from those proceedings (including, without limitation, suit, attachment prior to judgment, other attachment, the obtaining or judgement, execution or other enforcement) will be claimed by or on behalf of itself with respect to its assets;
- (b) waives any such right of immunity which it or its assets now has or may subsequently acquire; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with those proceedings, including, without limitation, the making, enforcement or execution against any assets whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in those proceedings.

32. GOVERNING LAW

This Agreement is governed by the laws of the State of Israel.

33. THIRD PARTIES

The parties intend that no term of the Agreement may be enforced by any person who is not a party to the Agreement.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

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Index of Schedules

Schedule	Description
1	Schedule of Conditions Precedent
2	Initial Commercial Centers
3	Borrower's Funded Subsidiaries and Projects
4	Subordination Agreement
5	Form of Guarantee
6	Repayment Schedule
7	Form of Loan Assignment

SCHEDULE 1

CONDITIONS PRECEDENT

1. **Constitutional documents**

A copy of the constitutional documents of the Borrower and each Holding Subsidiary.

2. **Borrower corporate authorisations**

- (a) Copies of resolutions of the board of directors and shareholders' meeting of the Borrower approving the terms of, and transactions contemplated by, the Finance Documents executed by it;
- (b) an approval from counsel to the Borrower confirming which persons are authorised to sign the Finance Documents on behalf of the Borrower and to sign and/or despatch all documents and notices to be signed and/or despatched by the Borrower under or in connection with the Finance Documents; and
- (c) a certificate of the Borrower confirming that the borrowing of the Loan in full would not cause any borrowing limit binding on the Borrower to be exceeded.

3. **Finance Documents and related documents**

Originals of the following duly executed by all parties to them:

- (a) this Agreement; and
- (b) each Security Document.

4. **Authorisations**

A copy of any specific licenses or consents required for the consummation of the transactions contemplated under the Agreement.

5. **Security matters**

- (a) Evidence that the Security Documents, other than the pledge over shares in Sadyba Center S.A., have been duly executed by the Borrower and have been perfected and registered at any relevant companies' or other register.
- (b) Within 90 days of signing this Agreement, evidence that a share pledge over its shares in Sadyba Center S.A. shall have been duly executed by Plaza Centers and have been perfected and registered at any relevant companies or other register.

(c) Within 270 (two hundred and seventy) days of signing this Agreement, evidence that a mortgage over the Prague commercial center located at U. Nekladokaka Padrezi Praha-3. Czech Republic shall have been duly executed by the Borrower and shall have been perfected and registered at any relevant companies' or other register, provided however that the Borrower's obligation to register or to cause the registration of such mortgage shall automatically lapse on such two hundred and seventieth day if, prior to that date:

- (i) no Event of Default shall have occurred; and
- (ii) no event of default shall have occurred in any loan agreement entered into between the Bank and Europe-Israel or any of its Subsidiaries.

6. Accounts

Evidence that the Loan Account has been opened in accordance with the Agreement.

7. Legal Opinions

- (a) From Marc Lavine, Israeli in-house legal adviser to the Borrower, addressed to the Bank;
- (b) From Czech legal counsel to the Borrower, addressed to the Bank; upon execution of the pledge pursuant to paragraph 5(b) of this Schedule 1; and
- (c) From Polish legal counsel to the Borrower, addressed to the Bank, upon registration of the pledge over the shares in Sadyba, and.
- (d) From Dutch legal counsel to the Borrower, addressed to the Bank, upon registration of the pledge over the shares in Plaza Centers.

8. Fees

Receipt of evidence that the Borrower has paid all fees, costs and expenses of the Bank and its advisers in accordance with the Agreement.

9. Valuation

Within 120 days of signing this Agreement, the Net Asset Appraisal referred to in Section 14.11(b) of the Agreement.

10. Loan Repayment Undertaking

An undertaking from Plaza Centers that any repayment by it of loans to the Borrower shall be made to the Revenue Account.

11. Group Structure

A group structure chart showing each Borrower Subsidiary and the holding structure of the Borrower by the Shareholder.

SCHEDULE 2
INITIAL COMMERCIAL CENTERS

1. Alba Plaza
2. Miskolc Plaza
3. Szeged Plaza
4. Debrecen Plaza
5. Krakow Plaza
6. Csepel Plaza
7. Pecs Plaza
8. Gyor Plaza

SCHEDULE 3
BORROWER'S FUNDED SUBSIDIARIES
AND PROJECTS

SCHEDULE 4
SUBORDINATION AGREEMENT

SCHEDULE 5
FORM OF THE GUARANTEE

SCHEDULE 6
REPAYMENT SCHEDULE

SCHEDULE 7
FORM OF LOAN ASSIGNMENT

SIGNATORIES

Bank

BANK HAPOALIM B.M.

By: _____

Borrower

ELBIT MEDICAL IMAGING LTD.

By: _____

**AMENDED AND RESTATED
LOAN AGREEMENT**

DATED 9 July 2003

U.S.\$ 57,950,000

MULTICURRENCY TERM LOAN

BETWEEN

**ELBIT MEDICAL IMAGING LTD.
as Borrower**

AND

**BANK HAPOALIM B.M.
as Bank**

**HERZOG FOX & NEEMAN
Asia House, 4 Weizmann Street
Tel-Aviv, Israel
Tel: 03 692 2020
Fax: 03 696 6464**

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THIS AMENDED AND RESTATED LOAN AGREEMENT is dated this 9th day of July 2003 between:

- (1) **ELBIT ULTRASOUND (NETHERLANDS) B.V.** a company (with company number 27156039) organised and existing under the laws of the Netherlands, having its registered office at 1016 EA Amsterdam, Keizergracht 239, the Netherlands as borrower (the "**Borrower**"); and
- (2) **BANK HAPOALIM B.M.**, a banking corporation incorporated in the State of Israel, acting through its Main Tel Aviv branch, whose address is at 41-45 Rothschild Boulevard, Tel Aviv, Israel, as Bank (the "**Bank**").

WHEREAS the Borrower entered into a Letter of Undertaking in favour of the Bank ("LOU") dated 27 September 2000; and

WHEREAS the parties wish to make certain amendments in the nature of the Loan provided under the LOU and in the collateral furnished therefor, and to amend the LOU in certain other respects, all subject to and in accordance with the terms and conditions set out herein.

NOW, THEREFORE, IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

"Accounts"

means:

- (a) the Loan Account; and
- (b) the Revenue Account.

"Advance"

means the principal amount of loans advanced under the LOU to the Borrower which are from time to time outstanding and which at the date of Agreement is in the amount of \$25,000,000 (twenty five million US dollars).

"Affiliate"

means a Subsidiary or a Holding Company of the Bank or any other Subsidiary of that Holding Company.

"Agency"

includes, in relation to a state or supranational organisation, any agency, authority, central bank, department, government, legislature, ministry, official or public person (whether autonomous or not) of, or of the government of, that state or supranational organisation.

"Agreement"

means this agreement.

"Authorised Investments"

has the meaning ascribed to such term in Clause 17.5(c).

"Available Currency"

means Dollar and Euro.

"Bank's Spot Rate of Exchange"

means the Bank's spot rate of exchange for the purchase of the relevant Available Currency in the London foreign exchange market at or about 11.00a.m. on a particular day.

"Borrower Funded Subsidiary"

means any direct or indirect Subsidiary of the Borrower engaged in the Business, where the Equity Contributions of the Borrower in such Subsidiary have been funded, in whole or in part, by utilising the proceeds of the Facility, namely those Subsidiaries specified in **Schedule 3**.

"Business"

means the business of owning and operating commercial and entertainment centers in Central and Eastern Europe, including the development, acquisition, refurbishment, conversion, extension and construction of commercial and entertainment centers in Central and Eastern Europe, whether directly or indirectly by the Borrower, or via its Borrower Funded Subsidiaries and whether by way of direct acquisition of rights in real estate or acting through any other legal entity.

"Business Day"

means a day (other than a Saturday or a Sunday) on which banks are open for business in London, Tel-Aviv and New York.

"Business Group"

means the Borrower, the Intermediary Companies and the Borrower Funded Subsidiaries.

"Charges"

means each of the following pledges:

- (a) share pledge dated to be executed by Plaza Centers in favour of the Bank over its shares in Sadyba Center S.A.;
- (b) share pledge dated the date hereof executed by the Borrower and Stichting L'Orage in favour of the Bank over their shares in Plaza Centers, comprising the entire issued and paid up share capital of Plaza Centers; and
- (c) a pledge dated 28 January 2002 over 615,500 ordinary shares, par value NIS 0.5 in Elscint Ltd., which shares are deposited in account number 600/665765 at the Loan Office and pledged in favour of the Bank.

"Charge over Accounts"

means the charge dated the date hereof executed by the Borrower in favour of the Bank over the Loan Account and the Revenue Account.

"Cost Base"

means:

- (a) in relation to an Advance in Dollars, LIBOR; and
- (b) in relation to an Advance in Euro, EURIBOR.

"Default"

means an Event of Default, or an event or circumstance which but for the giving of notice, passage of time, the making of any determination or fulfillment of any other applicable condition (or any combination of the foregoing) would constitute an Event of Default.

"Distribution"

means any monies received from and/or transfers made by any Borrower Funded Subsidiary deriving from the Business which are made in respect of and/or deriving from dividends, returns on capital, repayments of share premium, payments with respect to repayment of shareholder loans, award of loans made to the Borrower by any Borrower Funded Subsidiary, redemption, and/or any other distribution of any kind or description constituting a repayment or return on investment, in all cases net

of bank charges, reasonable brokerage fees and withholding taxes, but, excluding Free Funds.

"Dollar" or "\$"

means the lawful currency for the time being of the United States of America.

"Elbit Guarantee"

means the guarantee given by Elbit Medical in favour of the Bank to secure the obligations of the Borrower to the Bank pursuant to this Agreement, in the form and text attached hereto and marked as **Schedule 5**.

"Elbit Medical"

means Elbit Medical Imaging Ltd., a public company incorporated in the State of Israel with registered office at 13 Moses Street, Tel Aviv, Israel.

"Elbit Medical Loan Agreement"

means the loan agreement between the Bank and Elbit Medical, dated the date hereof.

"EBRD"

means the European Bank for Reconstruction and Development.

"EBRD Conversion Option"

means the option awarded to EBRD in terms of the EBRD Equity Financing Facility, in terms of which EBRD has the option to convert the amount of the EBRD Equity Financing Facility into shares of Plaza Centers, constituting up to ten percent (10%) of the issued share capital of Plaza Centers, to be issued and allotted to EBRD.

"EBRD Equity Financing Facility"

means the loan facility to be awarded by EBRD to Plaza Centers in an amount of Euro 35,000,000 (thirty five million Euros) for the funding of equity in Subsidiaries of Plaza Centers engaged in the Business, in relation to which EBRD has been awarded the EBRD Conversion Option;

"Equity Amount"

means the amount of the Equity Contributions in relation to each Project funded by the Bank, as set out in **Schedule 3** (as updated by written agreement of both the Bank and the Borrower, from time to time).

"Equity Contributions"

means the investments (whether in the form of shareholder loans or as equity investment) which have been made by the Borrower or Elbit Medical (directly or indirectly through a Borrower Funded Subsidiary or Intermediary Company) into the capital of each special purpose company which is established by the Borrower for the purpose of the Business, namely those amounts specified against the name of each Project comprising the Business as detailed in **Schedule 3**.

"Euro"

means the single currency of Participating Member States introduced in accordance with the provisions of Article 109(1)4 of the Treaty.

"EURIBOR"

means, in relation to an Advance or unpaid sum denominated in Euro for an Interest Period:

- (a) the rate per annum equal to the rate for deposits in Euro determined by the Banking Federation of the European Union for the relevant period, displayed on the Telerate Screen page 248 or any equivalent successor to that page or other page as appropriate (as reasonably determined by the Bank) (for the purposes of this definition, the "**Telerate Screen**"); or
- (b) if the relevant rates do not appear on the Telerate Screen for the purposes of paragraph (a) above, or the Bank reasonably determines that no rate for a period of comparable duration to the relevant Interest Period appears on the Telerate Screen) the arithmetic mean (rounded upwards to five decimal places) of the rates, as supplied to the Bank at its request, quoted by the Reference Banks to leading banks in the European Interbank Market,

at or about 11.00 a.m. on the relevant Rate Fixing Day for the offering of deposits in Euro for a period comparable to the relevant Interest Period or relevant period in respect of any unpaid sum.

"Europe Israel"

means Europe Israel M.M.S. Ltd., a company organized and existing in the State of Israel with its registered office at 13 Moses Street, Tel Aviv 67442.

"Europe Israel Loan Agreement"

means the loan agreement between the Bank and Europe Israel, dated 4 May 1999 (as amended or replaced from time to time).

"Event of Default"

means an event specified as such in Clause 16.1 (Events of Default).

"Facility"

means the Loan awarded in terms of this Agreement.

"Final Maturity Date"

means 31 December 2012.

"Finance Charges"

means:

- (a) interest, commissions, fees and costs payable by the Borrower under the Finance Documents;
- (b) amounts ascertained as being payable by the Borrower under Clause 10 (Taxes), Clause 12 (Increased Costs), Clause 20 (Stamp Duties) and Clause 21 (Indemnities) of this Agreement; and
- (c) any value added or other taxes payable by the Borrower in respect of the above,

but excluding Financing Principal.

"Finance Documents"

means:

- (a) this Agreement;
 - (b) each Security Document; and
 - (c) the documentation required to open or operate the Accounts,
- and any other document designated as such by the Bank and the Borrower.

"Financial Indebtedness"

means any indebtedness in respect of:

- (a) moneys borrowed or debit balances at banks and other financial institutions;
- (b) any charge, bond, note, loan stock or other security;
- (c) any documentary credit;

- (d) receivables sold or discounted (otherwise than on a non-recourse basis);
- (e) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession by the party liable where the advance or deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (f) any lease entered into primarily as a method of raising finance or financing the acquisition of the asset leased;
- (g) any currency swap or interest swap, cap or collar arrangement or any other derivative instrument;
- (h) any amount raised under any other transaction having the commercial effect of a borrowing or raising of money; or
- (i) any guarantee, indemnity or similar assurance against financial loss of any person.

"Financing Principal"

means principal amounts outstanding from time to time under this Agreement.

"Free Funds"

means any cash attributable to operating profits generated by a Project which may become available to the relevant Borrower Funded Subsidiary after all debt service reserve and other retention and security obligations in terms of the Project's senior debt facility have been satisfied and fulfilled.

"GAAP"

means the international accounting standards promulgated from time to time by the International Accounting Standards Committee.

"Group"

means, at any time, the Borrower, Elbit Medical and its Subsidiaries at that time.

"Guarantee"

means the guarantee entered into by Plaza Centers in favour of the Bank, dated the date hereof, in which Plaza Centers guarantees the obligations of the Borrower pursuant to this Agreement in the form and text attached hereto as marked as **Schedule "6"**.

"Holding Company"

in relation to a person, means an entity of which that person is a Subsidiary.

“Index”

means the consumer price index (also known as the cost of living index), including fruit and vegetables, published by the Central Bureau of Statistics in Israel (the “Bureau”), including the same index even if published by any other government institution and also including any official index replacing the same, whether based on the same data on which the existing index is based or not. If another index replaces the existing index, the Bureau shall determine the conversion ratio between them, and if the Bureau does not determine the conversion ratio between them within three (3) months of the publication of the other index, it shall be reasonably determined by the Bank in consultation with economic experts.

"Intermediary Company"

means:

- (a) Elbit Medical Imaging Ltd.;
- (b) Elbit Medical Holdings Ltd.;
- (c) Elbit Ultrasound Ltd.; and
- (d) Plaza Centers.

"Initial Commercial Centers"

the eight (8) commercial centers listed on Schedule 2 (Initial Commercial Centers).

"Insurance Proceeds"

means all proceeds of Insurances payable to or for the account of the Borrower whether by way of claims, return of premiums or otherwise.

"Insurances"

means all contracts and policies of insurance and re-insurance of any kind which pertain to the Business and which are taken out by or on behalf of the Business Group in accordance with the Finance Documents or (to the extent of its interest) in which the Borrower has an interest.

"Interest Period"

means each period determined in accordance with Clause 7 (Interest Periods).

"LIBOR"

means:

- (a) the rate per annum for deposits in Dollars which appears on Telerate Screen page 3750 or any equivalent successor to such page or other page as appropriate (as reasonably determined by the Bank) (for the purposes of this definition, the "**Telerate Screen**"); or
- (b) if the relevant rates do not appear on the Telerate Screen for the purposes of paragraph (a) above, or the Bank reasonably determines that no rate for a period of comparable duration to the relevant Interest Period appears on the Telerate Screen, the arithmetic mean (rounded upwards to five decimal places) of the rates, as supplied to the Bank at its request, quoted by the Reference Banks to leading banks in the London Interbank Market,

at or about 11.00 a.m. on the applicable Rate Fixing Day for the offering of deposits in the currency of the relevant Advance for a period comparable to the relevant Interest Period.

"Loan"

means the aggregate amount of all Advances.

"Loan Account"

means the account so designated to be maintained in accordance with this Agreement with account number _____ at the Loan Office in the name of the Borrower.

"Loan Assignment"

means the assignment by way of security dated the date hereof entered into by Elbit Medical in favour of the Bank in relation to the Plaza Centers Loans, in the form attached hereto as **Schedule "8"**.

"Loan Office"

means the central Tel Aviv branch of the Bank or such other branch in Israel as may be designated by the Bank by written notice to the Borrower at least fifteen (15) days in advance.

"Loan Period"

means the period commencing on the date hereof and ending on the Final Maturity Date.

"Mandatory Cost"

means the cost imputed to the Bank for compliance with any applicable regulatory or central bank requirement relating to the Advance made through a branch in the jurisdiction of the currency of the Advance.

"Margin"

means 3.35% (three and thirty five hundredths percent) per annum.

"Material Adverse Effect"

means any effect which, in the opinion of the Bank:

- (a) is or is likely to be materially adverse to the ability of the Borrower to perform or comply with its obligations under the Finance Documents (including any of its payment obligations under the Finance Documents) in a timely manner; or
- (b) is or is likely to be materially prejudicial to:
 - (i) the interests of the Bank under the Finance Documents; or
 - (ii) the business, operations or financial condition of the Borrower;

"Net Loan Amount"

means all outstanding:

- (a) Advances; plus
- (b) amounts pursuant to the Elbit Medical Loan Agreement;
- (c) loans or other facilities provided by the Bank which, at the date hereof, includes the loan provided by the Bank to Elbit Medical for the purposes of an investment in Insightec Image Guided Treatment Ltd. ("*Insightec*") in the amount of US\$ 10 million (ten million US Dollars); and
- (d) the guarantee provided by Elbit Medical in favour of the Bank in relation to the loan provided by the Bank to InSightec in the amount of US\$ 5 million (five million US Dollars),

together with all Finance Charges accruing thereon.

"NIS"

means the lawful currency for the time being of the State of Israel.

"Original Group Accounts"

means the audited and consolidated financial statements of the Borrower and Plaza Centers for the financial year ended 31st December, 2002.

"Outstanding Equity Loan Amount"

means all outstanding:

- (a) Advances; and
- (b) amounts pursuant to the Elbit Medical Loan Agreement.

"Participating Member State"

means a member state of the European Union that has adopted the single currency in accordance with the Treaty;

"Party"

means a party to this Agreement.

"Permitted Security Interest"

means:

- (a) any Security Interest arising under the Security Documents;
- (b) any Security Interest created by the Borrower or a Borrower Funded Subsidiary either before or after the date hereof to a financial institution in respect of the Refinancing by the Borrower and/or the relevant Borrower Funded Subsidiary of an existing Project (subject to the prior written consent of the Bank); and
- (c) any Security Interest (other than those set out above) created by the Borrower or a Borrower Funded Subsidiary after the date hereof, to a financial institution in respect of the purchase of a new asset and/or in respect of the development and construction of a new Project provided that the financial institution is funding such new asset or Project,

provided, that no Security Interest created by the Borrower or any Borrower Funded Subsidiary after the date hereof shall impair or rank ahead of any Security Interest arising under the Security Documents (other than in the circumstances provided in the charge over the shares of Plaza Centers in Sadyba Center S.A.).

"Plaza Centers"

means Plaza Centers (Europe) B.V., a company organized and existing in the Netherlands with its registered office at 239 Keizersgracht, EA1016 Amsterdam, The Netherlands.

“Plaza Centers Loans”

means any and all shareholders loans made by the Borrower or Elbit Medical to Plaza Centers directly or by way of any Intermediary Company and outstanding from time to time.

"Project"

means all those projects comprising the Business which have been and/or shall be developed, constructed and operated by the Borrower Funded Subsidiaries.

"Prepayment Amount"

means, in relation to the events set out in Clause 6.2, as follows:

- (a) where all or part of Plaza Centers is sold, the percentage of Plaza Centers sold in the Trigger Event multiplied by the Outstanding Equity Loan Amount on the date of the occurrence of the Trigger Event; or
- (b) where all or part of a Project is sold, the percentage of the Project sold in the Trigger Event multiplied by the Equity Amount for that Project on the date of the occurrence of the Trigger Event.

"Rate Fixing Day"

means the second Business Day before the first day of an Interest Period for an Advance (or such other day as is generally treated as the rate fixing day by market practice in the London interbank market).

"Reference Banks"

means, subject to Clause 24.3 (Reference Banks), HSBC plc, Citibank, The Royal Bank of Scotland and Barclays Bank.

“Refinancing”

means any loan facility awarded to a Borrower Funded Subsidiary in respect of a Project, the proceeds of which are applied in part to the repayment of either:

- (a) the construction loan facility awarded to that Borrower Funded Subsidiary in respect of the development of the relevant Project; or
- (b) any previous refinancing loan facility awarded to that Borrower Funded Subsidiary in respect of the relevant Project.

"Revenue Account"

means the account so designated to be maintained in accordance with this Agreement.

"Revenues"

means all net amounts payable to and/or received by the Borrower and/or to its account pertaining to the Business including, without limitation:

- (a) all revenues, loan repayments and Distributions received from any of the Borrower Funded Subsidiaries;
- (b) interest and other income earned on balances standing to the credit of any bank accounts conducted by (i) the Borrower in respect of the Business; and (ii) the Borrower's Funded Subsidiaries (to the extent not subject to a Security Interest in terms of the senior debt facility taken out by that Borrower Funded Subsidiary);
- (c) all Insurance Proceeds and
- (d) all proceeds received upon a Refinancing, sale, public offering or private placement.

"Sadyba Project"

means the commercial and entertainment center situated in the Sadyba District of Warsaw, Poland, owned by Sadyba Center S.A., in which Plaza Centers presently holds a 50% (fifty per cent) interest.

"Sadyba Option"

means either:

- (a) the call option in favour of Plaza Centers to acquire the remaining fifty per cent (50%) of the issued share capital of Sadyba Center SA; or
- (b) the put option in favour of I.T. Sadyba BV (a subsidiary of the Israel Theaters Group) to demand the acquisition by Plaza Centers of the fifty per cent (50%) shareholding held by it in Sadyba Center SA.

"Security Asset"

means any asset which is the subject of any Security Interest under the Security Documents.

"Security Documents"

means:

- (a) the Charges;

- (b) the Charge over Accounts;
- (c) the Subordination Agreements;
- (d) the Guarantee;
- (e) the Elbit Guarantee; and
- (f) the Loan Assignment,

and any other document evidencing or creating any Security Interest over any asset of the Borrower to secure any obligations of the Borrower to the Bank under the Finance Documents.

"Security Interest"

means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

"Subordinated Creditor"

means any Subsidiary or Holding Company of the Borrower that has, from time to time, provided debt funding to the Borrower.

"Subordination Agreements"

means each subordination agreement to be entered into from time to time (substantially in the form of **Schedule 4** (Subordination Agreement)) in accordance with the terms of Clause 15.10.

"Subsidiary"

means an entity from time to time of which a person has direct or indirect control, or owns directly or indirectly more than twenty five per cent. (25%) of the share capital or similar right of ownership.

"Taxes"

includes all present and future income and other taxes, levies, imposts, deductions, charges and withholdings in the nature of taxes whatsoever together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and **"Taxation"** shall be construed accordingly.

"Treaty"

means the Treaty establishing the European Economic Community, being the Treaty of Rome of 25 March 1957 as amended by the Single European Act 1986 and the

Maastricht Treaty (which was signed on 7 February 1992 and came into force on 1 November 1993) as amended, varied or supplemented from time to time.

"Trigger Event"

has the meaning ascribed to such term in Clause 6.2(b)(Mandatory Prepayment).

1.2 Construction

(a) In this Agreement, unless the contrary intention appears, a reference to:

(i) an **"amendment"** includes a supplement, novation or re-enactment and **"amended"** is to be construed accordingly;

"assets" includes properties, revenues and rights of every description;

an **"authorisation"** includes an authorisation, consent, approval, resolution, licence, exemption, filing and registration;

"control" means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise;

a **"month"** is a reference to a period starting on one day in a calendar month and ending on the day before the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last day in that calendar month;

a **"person"** includes any person, firm, company, corporation, partnership, association, government, state, Agency or other entity or one or more of them;

a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, Agency, department or regulatory, self-regulatory or other authority or organisation;

a **"Screen"** or a **"Page"** " on a "Screen" in the definition of "LIBOR" and "EURIBOR" includes any replacement screen or page nominated by the British Bankers Association as the information vendor for the purpose of displaying British Bankers Association Interest Settlement Rates for deposits in various currencies;

(ii) a provision of law is a reference to that provision as amended or re-enacted;

(iii) a Clause or a Schedule is a reference to a clause of or a schedule to this Agreement;

(iv) a person includes its successors and/or assigns;

- (v) a Finance Document or another document is a reference to that Finance Document or other document as amended, subject to compliance with the terms of this Agreement;
 - (vi) a time of day is a reference to Tel Aviv time; and
 - (vii) any representation by the Borrower, being to the best of its knowledge shall be deemed to be to the best of such person's knowledge after due inquiry.
- (b) Unless the contrary intention appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (c) The index to and the headings in this Agreement are for convenience only and are to be ignored in construing this Agreement.
 - (d) In this Agreement, words denoting the singular include the plural and vice versa; words denoting any gender include all genders.

2. LOAN

Subject to the terms of this Agreement, the Bank has advanced a loan to the Borrower consisting of the Advance in the amount of \$25,000,000 (twenty five million US Dollars).

3. PURPOSE

The Borrower has applied the proceeds of the Advance solely to fund its Equity Contributions to the Borrower Funded Subsidiaries in respect of the Business. Without affecting the obligations of the Borrower in any way, the Bank has no duty to monitor or verify the application of any Advance.

4. CONDITIONS PRECEDENT

The obligations of the Bank to the Borrower under this Agreement are subject to the condition precedent that the Bank has received originals, or where appropriate, copies certified as true, complete and up-to-date by an authorised signatory of all of the documents set out in **Schedule 1** (Conditions Precedent Documents) in form and substance satisfactory to the Bank.

5. REPAYMENT

5.1 Advance

The Borrower shall repay the Advance in 18 (eighteen) semi-annual installments commencing on 30 June 2004 and with the final installment due and payable on the Final Maturity Date, and same in accordance with the Repayment Schedule, as provided in Clause 5.5 (Repayment Schedule).

5.2 Currency

The Advance shall be repaid in the Available Currency in which the Advance was borrowed.

5.3 Repayment Schedule

Schedule 7 (Repayment Schedule) sets out, on the basis of the outstanding Advance on the date hereof, the amounts to be repaid by the Borrower on the last day of each Interest Period up to and including the Final Maturity Date. In the event that any prepayment of the Loan shall be effected by Borrower in accordance with Clauses 6.1 to 6.2 inclusive below, the amount of such prepayment shall be applied pro rata to all future repayment installments and the Repayment schedule amended accordingly.

5.4 Loan Amount

If, on the last day of an Interest Period, the outstanding debit balance of the Loan Account (howsoever arising) including, inter alia, the Advance in Dollars (or, if in another Available Currency, when converted into Dollars on the basis of the Bank's Spot Rate of Exchange), bank charges, expenses, commissions, interest payments, exceed the amount scheduled to be outstanding on such date as set down in **Schedule 7** (Repayment Schedule) ("*Scheduled Amount*"), the Borrower shall prepay any amount in excess of the Scheduled Amount within 5 (five) Business Days.

6. PREPAYMENT AND CANCELLATION

6.1 Voluntary Prepayment of Advance

The Borrower may, by giving not less than 30 days' prior notice to the Bank, prepay the Advance in whole or in part (but, if in part, at least the equivalent of US\$100,000 (one hundred thousand US Dollars)) provided that the prepayment is made on the last day of an Interest Period for the Advance.

6.2 Mandatory Prepayment

- (a) The Borrower shall, upon the occurrence of any Trigger Event (as such term is defined in sub-clause (b) of this Clause 6.2) deposit all Revenues arising from such Trigger Event in the Revenue Account immediately upon receipt thereof. On the last day of the Interest Period in which the Revenues deriving from a Trigger Event have been deposited into the Revenue Account as aforesaid, the Bank shall apply the amount of such Revenues required to be prepaid pursuant to this Clause 6.2, in prepayment of the Advance.
- (b) For the purposes of this Clause 6.2 (Mandatory Prepayment) each of the following events constitutes a Trigger Event:
 - (i) any public offering or private placement of any securities of the Borrower, Elbit Medical or any Borrower Funded Subsidiary;

- (ii) a merger or consolidation of the Borrower, Elbit Medical or any Borrower Funded Subsidiary with any other entity;
 - (iii) a sale, assignment, lease, or other disposal of (whether in one transaction or a series of transactions) any of the assets of the Borrower, Elbit Medical or any Borrower Funded Subsidiary assets including any shareholdings in any such Borrower Funded Subsidiary and any intellectual property to any person or entity;
 - (iv) a sale of any asset of the Borrower, Elbit Medical or Borrower Funded Subsidiary;
 - (v) a Refinancing of any debt of the Borrower, Elbit Medical or any Borrower Funded Subsidiary; or
 - (vi) the receipt by the Borrower or Elbit Medical of any Distributions; or
 - (vii) the exercise by EBRD of the EBRD Conversion Option.
- (c) In the event that, at such time as the Net Loan Amount is \$40,000,000 (forty million US Dollars) or more, the total aggregate Revenues from the Refinancing of the Initial Commercial Centers exceeds US\$57,000,000 (fifty seven million US Dollars), such excess Revenues shall be deemed to be a “future Refinancing” for the purposes of sub-clause (d) below.
- (d) Upon the Refinancing of any Project, a Borrower Funded Subsidiary or Plaza Centers (other than the Initial Commercial Centers) or any future Refinancing of the Initial Commercial Centers at such time as the Net Loan Amount is \$40,000,000 (forty million US Dollars) or more, the Borrower shall procure that forty percent (40%) of the Revenue from such Refinancing, less:
- (i) any sums in prepayment of any senior construction loans or any refinancing loans in place prior to the date hereof in relation to such Project;
 - (ii) reasonable expenses, costs and commissions incurred in respect of the award of the Refinancing Facility; and
 - (iii) other expenses approved by the Bank)
- shall be paid into the Revenue Account and applied in accordance with Clause 6.2(a).
- (e) Upon:
- (i) a sale of Plaza Centers (in whole or in part); or
 - (ii) a sale of a Project (in whole or in part), including the sale of all or part of the shares of the Borrower Funded Subsidiary which is the owner of the relevant Project; or

- (iii) a public offering or private placement of any securities of Plaza Centers or a Borrower Funded Subsidiary owning a Project;

the Borrower shall procure that the Revenues equal to the Prepayment Amount shall be paid into the Revenue Account and applied in accordance with Clause 6.2(a).

- (f) In the event that EBRD shall elect to exercise the EBRD Conversion Option, the Borrower undertakes to procure that the amount which is equivalent to:

- (i) the Outstanding Equity Loan Amount at the date of the exercise of the EBRD Conversion Option; multiplied by
- (ii) the percentage of the outstanding share capital of Plaza Centers allotted to EBRD in consequence of the exercise of the EBRD Conversion Option,

shall be deposited into the Revenue Account by not later than the last day of the Interest Period during which such share allotment is consummated, which amount shall be applied in the manner provided for in Clause 6.2(a) above.

- (g) Notwithstanding the provisions of Clause 6.2(d) above, in the event that Plaza Centers:

- (i) elects to exercise the Sadyba Option; and
- (ii) obtains senior debt financing for the Sadyba Project,

then and in such event the proceeds of such senior debt financing shall be applied as follows:

- (aa) to the payments due in respect of the exercise of the Sadyba Option;
- (bb) thereafter, to the acquisition of the freehold ownership rights in and to the property upon which the Sadyba Project is constructed; and
- (cc) thereafter, *pari passu* to the repayment of equity loan facilities taken out by Plaza Centers specifically in respect of the Sadyba Project from:
 - (A) Bank Leumi in the amount of US\$ 1,700,000 (one million seven hundred thousand US Dollars); and
 - (B) the Bank in accordance with the amount provided in Schedule 3; and
- (dd) thereafter, the Borrower undertakes to procure that any Revenues remaining after the execution of the above payments, if any, shall be deposited into the Revenue Account and applied in the manner provided for in Clause 6.2(d) above.

- (h) (i) If, upon the occurrence of any Trigger Event, Plaza Centers is required to pay Revenues to EBRD pursuant to the terms of the EBRD Equity Financing

Facility (due to a portion of the EBRD Equity Financing Facility having been applied to the Borrower Funded Subsidiary in relation to which the Trigger Event occurs) as well as to the Revenue Account (in accordance with this Clause 6.2), then the Borrower shall – notwithstanding the other provisions of this Clause 6.2 - apply such Revenues *pari passu* between the Revenue Account and EBRD, *pro rata* to the Equity Amount and the portion of the EBRD Equity Financing Facility applied in relation to such Borrower Funded Subsidiary.

- (ii) In the event that, pursuant to the terms of the EBRD Equity Financing Facility, Plaza Centers is required to pay all Revenues resulting from a particular Trigger Event first to EBRD, the Borrower shall not be obliged to pay such Revenues to the Revenue Account and the Equity Contributions in relation to the other Borrower Funded Subsidiaries (other than any Borrower Funded Subsidiary in relation to which a Trigger Event shall have occurred since the date of this Agreement) shall be increased *pro rata* by the amount of the Equity Contribution in relation to that Borrower Funded Subsidiary, so that the total Equity Contributions shall not be reduced as a result of such Trigger Event.

6.4 Miscellaneous provisions

- (a) Any notice of prepayment or cancellation under this Agreement is irrevocable.
- (b) Any prepayments under this Agreement shall be made together with accrued interest and all other amounts accrued under the Finance Documents (including, without limitation pursuant to Clause 21 (Indemnities)).
- (c) No prepayment or cancellation is permitted except in accordance with the express terms of this Agreement.
- (d) Any amount prepaid may not subsequently be re-borrowed (save as provided in terms of Section 6A.2 below).
- (e) To the extent that the payment of amounts to the Revenue Account after any of the Trigger Events set out in Clause 6.2 (Mandatory Prepayment) is dependent upon a Distribution being made by a Borrower Funded Subsidiary and/or by a Intermediary Company, the Borrower shall procure that such Distributions are made in order that such amounts may be paid by the Borrower into the Revenue Account in accordance with Clause 6.2 (Mandatory Prepayment).
- (f) No pre-payment penalties shall be imposed upon a pre-payment in accordance with the provisions of this Clause 6.

6A. CONVERSION OF AVAILABLE CURRENCY

6A.1 Request

- (a) The Borrower may request that a portion of the Advance (not exceeding fifty per cent (50%) of the total amount outstanding under the Facility at such time)

(the “**Loan Component**”) be converted into an Available Currency for the next Interest Period by submitting a written request to the Bank not later than ten (10) Business Days before the commencement of the forthcoming Interest Period.

- (b) The Loan Component shall remain denominated in such Available Currency for all future Interest Periods unless the Borrower submits a further request in accordance with this Clause 6A.1 (Request).

6A.2 Amount of Available Currency

If a Loan Component, or any portion thereof, is to be continued during its next Interest Period in a different currency (the “**new currency**”) from that in which it is currently denominated (the “**old currency**”), the Loan Component shall be repaid by the Borrower in full at the end of its current Interest Period in the old currency and, subject to the terms of this Agreement, shall be promptly thereafter re-advanced by the Bank in the new currency on the same terms and conditions specified in this Agreement, mutatis mutandis; the repaid amount shall be re-advanced in the new currency in an amount to be determined on the basis of the Bank’s Spot Rate of Exchange between the old currency and the new currency, two (2) Business Days before the commencement of that Interest Period.

6A.3 Prepayment

A repayment or prepayment of the Advance shall be in the currency in which each Loan Component was denominated in the Interest Period immediately prior to the date of such repayment or prepayment.

6A.4 Loan Amount

The provisions of this Clause 6A (Conversion of Available Currency) do not derogate from the provisions of Clause 5.6 (Loan Amount).

7. INTEREST PERIODS

7.1 Selection

Each Interest Period shall be a six-month period provided, however, that:

- (a) the first Interest Period shall commence on the date of this Agreement and shall end on 31 December 2003; and
- (b) the final Interest Period shall end upon the Final Maturity Date.

7.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

8. INTEREST

8.1 Interest rate

The rate of interest on each Advance for each of its Interest Periods is the rate per annum determined by the Bank to be the aggregate of the Margin and the Cost Base.

8.2 Due dates

Accrued interest on each Advance is payable by the Borrower on the last day of each Interest Period for that Advance.

8.3 Consolidation

All outstanding Advances shall be consolidated on the date hereof to form one single Advance.

8.4 Default interest

- (a) If the Borrower fails to pay any amount payable by it under the Finance Documents, it shall, forthwith on demand by the Bank, pay interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at the default rate of interest customary at the Bank at such time for loans in the Available Currency provided that the default rate shall, in no event, be lower than 5.5% (five and one-half percent) above the Interest Rate of the Advance over due amount under Clause 8.1 (Interest Rate) immediately before the due date.
- (b) If the Bank determines that deposits in the currency of the overdue amount are not at the relevant time being made available by the Reference Banks to leading banks in the London interbank market, the default rate will be determined by reference to the cost of funds to the Bank from whatever sources it may select.
- (c) Default interest shall be due and payable on demand and shall be compounded periodically as customary in the Bank from time to time.

8.5 Notification

The Bank shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

9. PAYMENTS

9.1 Place

All payments by the Borrower under the Finance Documents shall be made to the Bank to its account at the Loan Office or such other place as the Bank may notify to the Borrower for this purpose 5 (five) Business Days in advance.

9.2 Funds

Payments under the Finance Documents to the Bank shall be made for value on the due date at such times and in such manner as the Bank may specify to the Borrower as being customary at the time for the settlement of transactions in the currency of the relevant Advance.

9.3 Application

The Bank may apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied, provided that the Bank shall not apply such funds to the repayment or mandatory pre-payment of the Loan other than in accordance with the provisions of Clauses 5.1, 5.2 and 6.2 above.

9.4 Currency

- (a) Amounts payable in respect of costs, expenses and Taxes and the like are payable in the currency in which they are incurred.
- (b) Any other amount payable under the Finance Documents is, except as otherwise provided in the Finance Documents, payable in Dollars.

9.5 Set-off and counterclaim

All payments made by the Borrower under the Finance Documents shall be made without set-off or counterclaim.

9.6 Non-Business Days

- (a) If a payment under the Finance Documents is due on a day which is not a Business Day, the due date for that payment shall instead be the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal under the Finance Documents interest is payable on that principal at the rate prevailing on the original due date.

9.7 Partial payments

- (a) If the Bank receives a payment insufficient to discharge all the Advances then due and payable by the Borrower under the Finance Documents, the Bank shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
 - (i) **first**, in or towards payment of any unpaid fees, costs (including Mandatory Costs) and expenses of the Bank;

- (ii) **secondly**, in or towards payment of any Finance Charges due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment of any Financing Principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment of any other sum due but unpaid under the Finance Documents.
- (b) Paragraph (a) above shall override any appropriation made by the Borrower.

10. TAXES

All payments by the Borrower under the Finance Documents shall be made without any deduction and free and clear of and without deduction for or on account of any Taxes, except to the extent that the Borrower is required by law to make payment subject to any Taxes. If any Tax or amounts in respect of Tax must be deducted, or any other deductions must be made, from any amounts payable or paid by the Borrower, or paid or payable by the Bank under the Finance Documents, the Borrower shall pay such additional amounts as may be necessary to ensure that the Bank receives a net amount equal to the full amount which it would have received had payment not been made subject to Tax or other deduction.

11. MARKET DISRUPTION

11.1 Absence of quotations

If a Reference Bank does not supply an offered rate by 1.00 p.m. two Business Days before the first day of an Interest Period, the applicable LIBOR shall, subject to Clause 11.2, be determined on the basis of the quotations of the remaining Reference Banks.

11.2 Market disruption

If in relation to any Interest Period the Bank determines (which determination shall be conclusive and binding) that:

- (a) by reason of circumstances affecting the London interbank market generally, adequate and fair means do not exist for ascertaining LIBOR or EURIBOR for that Interest Period; or
- (b) deposits in Dollars or Euros in the amount required for that Interest Period are not available to the bank in the London interbank market,

the Bank shall promptly notify the Borrower accordingly.

11.3 Alternative basis for outstanding Advances

If a notification under Clause 11.2 (Market Disruption) applies to an Advance which is outstanding, then, notwithstanding any other provision of this Agreement:

- (a) within five Business Days of receipt of the notification, the Borrower and the Bank shall enter into negotiations for a period of not more than 30 days with a view to agreeing to an alternative basis for determining the rate of interest or funding or both applicable to that Advance or any other Advances;
- (b) any alternative basis agreed under paragraph (a) above shall be binding on the Parties;
- (c) if no alternative basis is agreed, the Bank shall certify, on or before the last day of the Interest Period to which the notification relates, an alternative basis for maintaining the Advance;
- (d) any such alternative basis may include an alternative method of fixing the interest rate, alternative Interest Periods or alternative currencies but it must reflect the cost to the Bank of funding its participation in the Advance from whatever sources it may select plus the Margin; and
- (e) each alternative basis so certified shall be binding on the Borrower and the Bank and treated as part of this Agreement.

12. INCREASED COSTS

12.1 Increased costs

- (a) Subject to Clause 12.2 (Exceptions), the Borrower shall forthwith on demand which shall include a computation of the relevant amount in reasonable detail by the Bank pay to the Bank the amount of any increased cost incurred by it or any of its Affiliates as a result of:
 - (i) the introduction of, or any change in, or any change in the interpretation or application of, any law or banking regulation; or
 - (ii) compliance with any regulation made after the date of this Agreement,

(including any law or regulation relating to taxation (excluding income tax), monetary union, or reserve asset, special deposit, cash ratio, liquidity or capital adequacy requirements or any other form of banking or monetary control).
- (b) In this Agreement "**increased cost**" means:
 - (i) an additional cost incurred by the Bank or any of its Affiliates as a result of it having entered into, or performing, maintaining or funding its obligations under, any Finance Document;

- (ii) that portion of any additional cost incurred by the Bank or any of its Affiliates in making, funding or maintaining all or any advances comprised in a class of advances formed by or including the Bank's participations in any Advance made or to be made under this Agreement as is attributable to the Bank making, funding or maintaining those participations; and
- (iii) the amount of any payment made by the Bank or any of its Affiliates, or the amount of any interest or other return foregone by the Bank or any of its Affiliates, calculated by reference to any amount received or receivable by the Bank or any of its Affiliates from any other Party under this Agreement.

12.2 Exceptions

Clause 12.1 (Increased costs) does not apply to any increased cost:

- (a) compensated for by the operation of Clause 10 (Taxes); or
- (b) attributable to any change in the rate of, or change in the basis of calculating, Tax on the overall net income of the Bank (or the overall net income of a division or branch of the Bank) imposed in the jurisdiction in which its principal office or Loan Office is situate.

13. ILLEGALITY

If it is or becomes unlawful in any jurisdiction for the Bank to give effect to any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Advance, then:

- (a) the Bank may notify the Borrower accordingly; and
- (b) (i) the Borrower shall forthwith prepay the Advance together with all other amounts payable by it to the Bank under the Finance Documents (including, without limitation, pursuant to Clause 21 (Indemnities)); and
- (ii) the Bank's undrawn Loan will forthwith be cancelled.

14. REPRESENTATIONS AND WARRANTIES

14.1 Representations and warranties

The Borrower makes the representations and warranties set out in this Clause 14 (Representations and Warranties) to the Bank, in reliance on which the Bank has entered into the Agreement.

14.2 Status

- (a) It is a company, duly organised and validly existing under the laws of the Netherlands; and

- (b) each member of the Group has the power to own its assets and carry on its business as it is being conducted.

14.3 Powers and authority

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

14.4 Legal validity

Each Finance Document to which it is or will be a party constitutes, or when executed in accordance with its terms will constitute, its legal, valid and binding obligation enforceable in accordance with its terms.

14.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not:-

- (a) conflict with any law or regulation or judicial or official order; or
- (b) conflict with the constitutional documents of any member of the Group; or
- (c) conflict with any document which is binding upon any member of the Group or any asset of any member of the Group.

14.6 No default

- (a) No Default is outstanding or might result from the making of any Advance; and
- (b) no other event is outstanding which constitutes (or with the giving of notice, passage of time, the making of any determination or fulfillment of any other applicable condition or any combination of the foregoing, might constitute) a default under any document which is binding on the Borrower or any member of the Group or any asset of the Borrower or any member of the Group.

14.7 Authorizations

All authorizations required in connection with the entry into, performance, validity and enforceability of the Finance Documents and the transactions contemplated by the Finance Documents have been obtained or effected and are in full force and effect.

14.8 Litigation

No material litigation, arbitration or administrative proceedings are current or, to the best of its knowledge, pending or threatened, which might, if adversely determined,

have a Material Adverse Effect, which are not reflected in the Original Group Accounts.

14.9 Information

- (a) All information provided or delivered by it to the Bank was true, correct and complete in all material respects and not misleading in any material respect as of the date that it was delivered; and
- (b) all information provided or delivered by it to the Bank did not omit, as at the date that it was delivered, any information which, if disclosed, might adversely affect the decision of a financial institution considering whether to enter into this Agreement.

14.10 Financial statements

- (a) The audited and consolidated financial statements or the reviewed financial statements (as the case may be) of the Borrower and Plaza Centers most recently delivered to the Bank (which, at the date of this Agreement, are the Original Group Accounts):-

- (i) have been prepared in accordance with GAAP, consistently applied; and
 - (ii) give a true and fair view of the financial condition of the Borrower and of Plaza Centers as of the date to which they were drawn up,

and there has been no material adverse change in the financial condition of the Borrower and of each of the Borrower Subsidiaries since the date on which those financial statements were drawn up.

14.11 Compliance

It is currently complying with applicable laws and regulations in all material respects and there is no event or circumstance which would be likely to cause it to cease to comply with such laws and regulations in any material respect.

14.12 Insurances

All Insurances are or, at the time they are required to be maintained or effected, will be, in full force and effect and so far as it is aware no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any insurer to avoid or otherwise reduce its liability under any policy relating to the Insurances.

14.13 Title and Ownership

The Borrower and each of its Funded Subsidiaries have good and marketable title to its assets (including without limitation, in the case of the Borrower, to any securities held by it in any Borrower Funded Subsidiary) free and clear of all Security Interests (other than Permitted Security Interests).

14.14 Status of security

Each Security Document confers the Security Interests it purports to confer over all of the assets referred to in it and those Security Interests:

- (a) are not subject to any prior or higher ranking or pari passu Security Interests (other than any Permitted Security Interests); and
- (b) are not void or liable to avoidance, due to the insolvency of the Borrower on the date of execution of the relevant Security Document, on liquidation or bankruptcy, composition or any other similar insolvency proceedings.

14.15 Pari passu ranking

The Borrower's obligations under the Finance Documents rank and will rank at least pari passu with all its other unsecured obligations, except for obligations mandatorily preferred by law applying to companies generally.

14.16 Indebtedness

The Borrower does not have any outstanding indebtedness to any of its shareholders, to any holding company of its shareholders and to any other member of the Group.

14.17 Taxes on payments

All amounts payable by the Borrower under the Finance Documents shall be made free and clear of, and without deduction for, or on account of, any Tax.

14.18 Stamp duties

The Borrower shall bear and pay all stamp or registration duty or similar taxes or charges which shall be payable in respect of any Finance Document.

14.19 Immunity

- (a) The execution by the Borrower of each Finance Document constitutes, and its exercise of its rights and performance of its obligations under each Finance Document will constitute, private and commercial acts done and performed for private and commercial purposes; and
- (b) the Borrower will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in the State of Israel or any other jurisdiction in relation to any Finance Document.

14.20 Jurisdiction/governing law

The Borrower's:

- (a) irrevocable submission under Clause 30 (Jurisdiction) to the jurisdiction of the courts of Israel;
- (b) agreement that this Agreement is governed by Israeli law; and
- (c) agreement not to claim any immunity to which it or its assets may be entitled, are legal, valid and binding under the laws of Israel.

14.21 Times for making representations and warranties

The representations and warranties set out in this Clause 14:

- (a) are made by the Borrower on the date of this Agreement; and
- (b) are deemed to be repeated by the Borrower on each day thereafter with reference to the facts and circumstances then existing.

15. UNDERTAKINGS

15.1 Duration

The undertakings in this Clause 15 (Undertakings) remain in force from the date of this Agreement for so long as any amount is or may be outstanding under this Agreement. All of those undertakings (and any undertakings or restrictions in any other clause of the Finance Documents) are cumulative, and accordingly none of them shall (except to the extent expressly stated) be limited by any exception to any other undertaking or by implication from the terms of any other undertaking.

15.2 Financial Information

The Borrower shall supply (or procure that the same are supplied) to the Bank:

- (a) as soon as the same are available (and in any event within 90 days of the end of each of its financial years), the audited consolidated accounts and financial reports of the Borrower and Plaza Centers for that financial year.
- (b) as soon as the same are available (and in any event within 60 days of the end of the each quarter of each of its financial years) reviewed interim financial reports of the Borrower for that quarter.
- (c) as soon as the same are available (and in any event within 60 days of the end of each quarter) reviewed financial statements for that quarter of Plaza Centers (including a balance sheet, statements of income and cash flow);
- (d) as soon as the same are available, the statutory accounts of Plaza Centers for each financial year.

- (e) within 60 days of a written request by the Bank (which shall be delivered not more than once in any two consecutive calendar years, unless the Bank considers that an event has occurred requiring a greater frequency), a valuation addressed to the bank (produced by a third party acceptable to the Bank) of the assets of the Borrower.

15.3 Other Information

- (a) The Borrower shall supply (or pounce that the same are supplied) to the Bank:
 - (i) all documents despatched by it to its shareholders (or any class of them) or by it to its creditors (or any class of them) at the same time as they are despatched;
 - (ii) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings of a material nature relating to it which are current, threatened or pending, and, together, in each case, with details of how it proposes to conduct the litigation, arbitration or proceedings or otherwise resolve the dispute in question;
 - (iii) reasonably promptly, and in any case, within 20 Business Days such further information in the possession or control of the Group regarding its financial condition and operations as the Bank may reasonably request;
 - (iv) forthwith, details of any event of which it is aware which may have a Material Adverse Effect; and
 - (v) promptly, upon the earlier of (A) the signing of a term sheet for a Refinancing by a Borrower Funded Subsidiary or (B) the finalisation of commercial terms for such Refinancing by a Borrower Funded Subsidiary (such notification for the avoidance of doubt, shall not in itself constitute a Trigger Event).
- (b) In the event that an Event of Default has occurred, the Borrower shall allow the Bank appropriate and reasonable access to its records and accounts.

15.4 Notification of Default

The Borrower shall notify the Bank of:

- (a) any Default (and the steps, if any, being taken to remedy it);
- (b) any event of default or potential event of default arising under any loan agreement entered into by any Subsidiary,

immediately upon its becoming aware thereof.

15.5 Compliance certificates

The Borrower shall supply to the Bank promptly at any time, if the Bank so requests, a certificate signed by two of its senior officers certifying that no Default is outstanding or, if a Default is outstanding, specifying the Default and the steps, if any, being taken to remedy it.

15.6 Authorisations

The Borrower shall promptly obtain, maintain and comply with the terms of any authorisation required at the relevant time under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.

15.7 Pari passu ranking

The Borrower shall procure that its obligations under the Finance Documents do and will rank at least pari passu with all its other present and future unsecured obligations, except for obligations mandatorily preferred by law applying to companies generally.

15.8 Negative pledge

- (a) The Borrower shall not and shall procure that no Borrower Funded Subsidiary shall create or permit to subsist any Security Interest on any of its present or future assets.
- (b) Paragraph (a) does not apply to any Permitted Security Interest.
- (c) If the Borrower creates or permits to subsist any Security Interest on any of its assets contrary to paragraph (a) above, all of the obligations of the Borrower under this Agreement shall, to the extent permissible under applicable law, automatically and immediately be secured upon the same assets, ranking at least pari passu with the other obligations secured on those assets.

15.9 Transactions similar to security

- (a) The Borrower shall not, without the prior consent of the Bank:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby it is or may be leased to or re-acquired or acquired by a member of the Group or any of its related entities; or
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms, except for the discounting of bills or notes in the ordinary course of trading,

in circumstances where the transaction is entered into primarily as a method of raising finance.
- (b) Paragraph (a) does not apply to Permitted Security Interests.

15.10 Borrowings

The Borrower shall not incur any Financial Indebtedness to any Subsidiary unless such Subsidiary has first signed a Subordination Agreement in favour of the Bank, substantially in the form of Schedule 4 (Subordination Agreement).

15.11 Disposals

- (a) The Borrower shall not, either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily, sell, transfer, grant or lease or otherwise dispose of all or any substantial part of the assets of the Business (including tax losses).
- (b) Paragraph (a) does not apply to:
 - (i) disposals made in the ordinary course of business of the disposing entity; or
 - (ii) disposals of assets in exchange for other assets comparable or superior as to type, value and quality;
 - (iii) disposals of obsolete or surplus assets no longer required for the relevant business;
 - (iv) the payment of cash as consideration for the acquisition of any asset or service;
 - (v) Permitted Security Interests; or
 - (vi) any other disposal approved by the Bank (such approval not to be unreasonably withheld).

15.12 Mergers and acquisitions

The Borrower shall not, and shall procure that no other member of the Business Group will enter into any amalgamation, demerger, merger or reconstruction.

15.13 Compliance with laws and payment of taxes

- (a) The Borrower shall comply (and shall procure that each other member of the Group complies) with all laws and regulations applicable to it to the extent that failure to do so would have a Material Adverse Effect.
- (b) The Borrower shall:
 - (i) file, or procure the filing of, all tax and informational returns that are required to be filed by it in any jurisdiction; or
 - (ii) pay all its taxes when due, except to the extent the taxes are contested in good faith and by appropriate means, and a reserve reasonably regarded as adequate has been set aside for payment of those taxes.

15.14 Change of business

The Borrower shall procure that no other member of the Business Group will engage in any business or activities other than the Business and any business incidental to its implementation, other than with the approval of the Bank (such approval not to be unreasonably withheld).

15.15 Share capital

The Borrower shall not, without the prior consent of the Bank:

- (a) purchase, cancel or redeem any of its share capital or that of Plaza Centers (other than consequent upon exercise of the EBRD Conversion Option); or
- (b) issue any further securities (including consequent upon exercise of the EBRD Conversion Option) if as a result of such Europe Israel would hold, directly or indirectly, less than 50.1% of the issued share capital of the Borrower.

15.16 Distributions

- (a) Except as required by law, the Borrower shall not allow, nor shall it allow any member of the Business Group to allow, any block or impediment to be placed on the ability of the Borrower or any member of the Business Group to declare or pay any Distribution, other than pursuant to the terms of senior construction facilities taken by any subsidiary in relation to a Project, without the prior written consent of the Bank.
- (b) Provided that no Event of Default has occurred, Borrower shall not be obliged to Distribute any Free Funds generated by the Projects and/or the Business.

15.17 Insurances

The Borrower shall, and shall procure that each member of the Group shall, maintain insurance with financially sound and reputable insurers with respect to its assets of an insurable nature against such risks and in such amounts as are normally maintained by persons carrying on the same or a similar class of business.

15.18 Conduct of business

The Borrower shall:

- (a) in all material respects conduct its business in a reasonable and prudent manner in accordance with all applicable laws and regulations and the terms of the Finance Documents; and
- (b) meet all of its material obligations as they fall due; and
- (c) promptly perform its material obligations, and enforce its material rights under each agreement to which it is a party, to the extent that failure to do so would have Material Adverse Effect.

15.19 Use of Proceeds

The Borrower shall apply the proceeds of the Advances wholly and exclusively for the purposes set out in Clause 3 (Purpose).

15.20 Amendments and Agreements

- (a) The Borrower shall not, directly or indirectly, terminate, cancel or suspend, or permit or consent to any termination, cancellation or suspension of, or enter into or consent to or permit an assignment of the rights or obligations of any party to, any material agreement to which it is a party and pertaining to the Business without receiving the prior written consent of the Bank.
- (b) The Borrower shall not, directly or indirectly, amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver of, any of the provisions of, or give any consent under, any material agreement to which it is a party and pertaining to the Business without receiving the prior written consent of the Bank.

15.21 Financial Covenants

- (a) The Borrower shall procure that Adjusted Shareholder's Equity of Elbit Medical shall at all times represent at least 20% (twenty per cent) of the Adjusted Balance Sheet Value and shall procure the provision of an auditor's statement to this effect with every audited or reviewed consolidated balance sheet of Elbit Medical furnished to the Bank.

In this Clause 18.21(a):

"Adjusted Shareholders Equity" means as appearing in the consolidated balance sheet of Elbit Medical plus Capital Reserves.

"Capital Reserves" means capital reserves of: (i) Euro 35,000,000 (thirty five million Euros) resulting from the acquisition by Elscint Ltd of BEA Hotels N.V. from a Subsidiary of Europe Israelin September 1999; and (ii) Euro 29,500,000 (twenty nine million five hundred thousand Euros) resulting from the acquisition by Elbit the Borrower of Plaza Centers from BEA Holdings N.V., in September 2000, both:

- (i) as linked to the Dutch CPI from a base index of 109.4 (with regard to (i)) and 112.65 (with regard to (ii));
- (ii) as converted from Euro to NIS at the Bank's Spot Rate of Exchange; and
- (iii) as reduced from time to time on the sale of acquired assets.

"Dutch CPI" means the consumer price index published by the Central Bureau voor de Statistiek in The Netherlands (the "*Bureau*"), including the same index even if published by any other government institution and also including any official index

replacing the same, whether based on the same data on which the existing index is based or not. If another index replaces the existing index, the Bureau shall determine the conversion ratio between them, and if the Bureau does not determine the conversion ratio between them within three (3) months of the publication of the other index, it shall be reasonably determined by the Bank in consultation with economic experts.

"Adjusted Balance Sheet Value" means the total value of the balance sheet as shown in the latest published audited or reviewed consolidated balance sheet of Elbit Medical less cash balances, deposits and negotiable instruments plus Capital Reserves.

- (b) (i) The Borrower shall procure that Elbit Medical's Net Operating Profit (before deductions for (A) depreciation and amortisation on items forming part of the Net Operating Profit; and (B) research and development costs relating to Insightec, all as detailed in its audited and reviewed accounts) at 30 June 2004 (on an annualized basis) and at 31 December 2004 (for the financial year 2004) shall be not less than NIS 90 million (ninety million New Israeli Shekels).
- (ii) The Borrower shall procure that Elbit Medical's Net Operating Profit (before deductions for depreciation and amortisation on items forming part of the Net Operating Profit and (B) fifty per cent (50%) of the research and development costs relating to Insightec, all as detailed in its audited and reviewed accounts) shall at 30 June 2005 (on an annualized basis) and at 31 December 2005 (for the financial year 2005) shall not less than NIS 100 million (one hundred million New Israeli Shekels).
- (iii) The Borrower shall procure that Elbit Medical's Net Operating Profit (before deductions for depreciation and amortisation relating to the Net Operating Profit as detailed in its audited and reviewing accounts) shall at 30 June 2006 and on each 30 June up to the Final Maturity Date (on an annualized basis) and at 31 December 2006 and each 31 December thereafter (for the financial year ending on such date) shall be not less than NIS 120 million (one hundred and twenty million New Israeli Shekels).

"Net Operating Profit" means net operating profit, before finance income or expenses, as appearing in the audited or reviewed consolidated financial statements of Elbit Medical.

- (c) (i) The Borrower shall procure that the Aggregate Net Value of all the assets of Plaza Centers, less all liabilities of Plaza Centers and its subsidiaries (including, inter alia, shareholders loans) shall :
 - (A) on the date hereof, be no less than \$90,000,000 (ninety million United States Dollars);
 - (B) on June 30, 2004, be no less than \$100,000,000 (one hundred million United States Dollars); and

- (C) on June 30, 2005 be no less than \$125,000,000 (one hundred and twenty five million US Dollars).

“Aggregate Net Value” shall be as determined by a third party appraiser acceptable to the Bank in a written valuation addressed to the Bank (**“Net Value Appraisal”**). Borrower shall furnish the Net Value Appraisal determining the Aggregate Net Value on the date hereof by not later than a date 120 (one hundred and twenty) days following the date hereof. Borrower shall furnish the Net Value Appraisal determining the Aggregate Net Value on June 30, 2004 and June 30, 2005 respectively by not later than 90 (ninety) days following the relevant determination date.

- (d) These covenants shall be calculated semi-annually on the basis of the latest published audited and reviewed consolidated financial statements of the Borrower or Elbit Medical, as appropriate. On each 30 June commencing on 30 June 2004, the Net Operating Profit shall be multiplied by two (2) in order to achieve an annualized figure.
- (e) The financial covenants set forth in this Section 15.21 shall not apply at such time as the following circumstances shall all exist:
- (i) the Net Loan Amount is less than \$30,000,000 (thirty million US Dollars);
 - (ii) the total amount outstanding under the Europe Israel Loan Agreement is less than \$30,000,000 (thirty million US Dollars); and
 - (iii) there has been no Event of Default under this Agreement.

15.22 EBRD

- (a) The Borrower shall procure that, without the Bank’s prior consent:
- (i) the EBRD Conversation Option shall provide the right for EBRD to acquire no more than ten percent (10%) of the issued share capital of Plaza Centers on the basis of a company valuation of the total assets (less all bank debt) of Plaza Centers of not less than US\$275,000,000 (two hundred and seventy five million US Dollars); and
 - (ii) the EBRD Equity Financing Facility shall require repayments of principal commencing no earlier than four (4) years after the grant of the EBRD Equity Financing Facility.
- (b) The Borrower shall provide to the Bank provide copies of the definitive documentation setting out the provisions of the EBRD Conversion Option and EBRD Equity Financing Facility at least ten (10) days prior to the execution thereof.

15.23 Management Fees

The Borrower shall procure that any management fees paid by any member of the Business Group to any entity other than:

- (a) an Intermediary Company or any of its Subsidiaries;
- (b) the Borrower or any of its Subsidiaries; or
- (c) a Holding Company of the Borrower or any of its Subsidiaries,

shall be reasonable and in any event shall be in an amount not exceeding 5% (five per cent) of: (a) the development, financing and construction costs of any Project prior to completion which is being executed by such member of the Business Group; or (b) the gross revenues of such member of the Business Group .

16. DEFAULT

16.1 Events of Default

Each of the events set out in Clauses 16.2 to 16.18 (inclusive) of this Clause 16 is an Event of Default (whether or not caused by any reason whatsoever outside the control of the Group or any other person).

16.2 Non-payment

The Borrower does not within three (3) Business Days of the due date pay any amount payable by it under the Finance Documents at the place at and in the currency in which it is expressed to be payable.

16.3 Breach of other obligations

- (a) The Borrower does not comply with any provision under any of Clauses 15.4 (Notification of Default), 15.7 (Pari Passu Ranking), 15.8 (Negative Pledge), 15.9 (Transactions Similar to Security), 15.10 (Borrowings), 15.11 (Disposals), 15.12 (Mergers and acquisitions), 15.14 (Change of business), 15.16 (Distributions), 15.17 (Insurances), or 15.22 (EBRD).
- (b) Any member of the Business Group does not comply with any provision of the Finance Documents (other than those referred to in Clauses 16.2 and 16.3(a)) and, if capable of remedy, that breach is not remedied within 10 (ten) days of the earlier of receipt of notice from the Bank specifying the breach and the member of the Business Group first becoming aware of the failure.

16.4 Misrepresentation

A representation, warranty or statement made or repeated in or in connection with any Finance Document or in any document delivered by or on behalf of any member of the Group under or in connection with any Finance Document is incorrect in any material respect when made or deemed to be made or repeated and shall continue to

be incorrect for a period of ten (10) days from the date such representation or warranty is or is deemed to have been made or repeated.

16.5 Legal Validity

Any Finance Document is not or ceases to be a valid, binding and enforceable obligation of, or is repudiated by, any member of the Business Group or becomes void or unenforceable.

16.6 Cross-default

- (a) (i) Any Financial Indebtedness of the Borrower is not paid when due or within the lesser of:
 - (A) any originally applicable grace period; and
 - (B) seven (7) Business Days;
- (ii) An event of default howsoever described (or any event which with the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition or any combination of the foregoing would constitute such an event of default) occurs under any document relating to such Financial Indebtedness of the Borrower;
- (iii) Any Financial Indebtedness of the Borrower becomes prematurely due and payable or is placed on demand as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (iv) Any commitment for, or underwriting of, any such Financial Indebtedness of the Borrower is cancelled or suspended as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (v) Any Security Interest securing any Financial Indebtedness over any asset of the Borrower becomes enforceable.
- (b) (i) Any Financial Indebtedness of the Group other than the Borrower is not paid when due or within the lesser of:
 - (A) any originally applicable grace period; and
 - (B) seven (7) Business Days;
- (ii) An event of default howsoever described (or any event which with the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition or any combination of the foregoing would constitute such an event of default) occurs under any document relating to such Financial Indebtedness of the Group other than the Borrower;

- (iii) Any Financial Indebtedness of the Group other than the Borrower becomes prematurely due and payable or is placed on demand as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (iv) Any commitment for, or underwriting of, any such Financial Indebtedness of the Group other than the Borrower is cancelled or suspended as a result of an event of default (howsoever described) under the document relating to that Financial Indebtedness;
- (v) Any Security Interest securing any Financial Indebtedness over any asset of the Group other than the Borrower becomes enforceable;

provided that where such event relates to a member of the Group (other than the Borrower or a Intermediary Company) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

- (c) An event of default occurs pursuant to terms of the Elbit Medical Loan Agreement.

16.7 Insolvency

- (a) Borrower or any Intermediary Company:
 - (i) is, or is deemed unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or
 - (iii) by reason of financial difficulties, begins negotiations with one or more of its creditors with a view to the readjustment or rescheduling of any of its indebtedness.
- (b) In the event that any member of the Group other than the Borrower or a Intermediary Company:
 - (i) is, or is deemed unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or
 - (iii) by reason of financial difficulties, begins negotiations with one or more of its creditors with a view to the readjustment or rescheduling of any of its indebtedness.

provided that where such event relates to a member of the Group other than the Borrower or a Intermediary Company such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.8 Insolvency proceedings

- (a) Any step (including petition, proposal or convening a meeting) is taken with a view to a composition, assignment or arrangement with any creditors of the Group; or
- (b) a meeting of members of any member of the Group is convened for the purpose of considering any resolution for (or to petition for) its winding-up or for its administration or any such resolution is passed; or
- (c) any person presents a petition for the winding-up or for the administration of any member of the Group which is not withdrawn or set aside within twenty-one (21) days; or
- (d) an order for the winding-up or administration of any member of the Group is made;

provided that where such event relates to a member of the Group (other than the Borrower or a Intermediary Company) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.9 Appointment of receivers and managers

- (a) Any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or the like is appointed in respect of any member of the Group or any material part of its assets which is not withdrawn or set aside within twenty-one (21) days; or
- (b) the directors of any member of the Group request the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or the like; or
- (c) any other steps are taken to enforce any Security Interest over any material part of the assets of any member of the Group;

provided that where such event relates to a member of the Group (other than the Borrower or a Intermediary Company) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.10 Creditors' process

Any attachment, sequestration, distress or execution affecting any material asset of any member of the Group is issued and not discharged within ninety (90) days or such shorter period as may render such asset liable to forfeiture, seizure or sale, provided that where such event relates to a member of the Group (other than the Borrower or a Intermediary Company) such event shall only constitute an Event of Default if it has a Material Adverse Effect on Borrower.

16.11 Cessation of business

- (a) The Borrower or a Intermediary Company ceases, or threatens to cease, to carry on all or a substantial part of its business.
- (b) Any other member of the Group ceases, or threatens to cease, to carry on all or a substantial part of its business, provided that where such event relates to a member of the Group (other than the Borrower or a Intermediary Company) such event shall only constitute an Event of default if it has a Material Adverse Effect on Borrower.

16.12 Illegality

It becomes unlawful for any member of the Group to perform any of its obligations under the Finance Documents.

16.13 Effectiveness of security

Any Security Document entered into by any member of the Group is not or ceases to be effective or is alleged by any such person to be ineffective for any reason.

16.14 Change in control

There is a change of control without the prior written consent of the Bank, as a result of which:

- (a) Europe Israel holds, directly or indirectly, less than fifty and one-tenth percent (50.1%) of the issued share capital of Elbit Medical; or
- (b) Elbit Medical holds less than one hundred per cent (100%) of the issued share capital of the Borrower; or
- (c) the Borrower holds less than one hundred percent (100%) of the issued share capital of each Intermediary Company (other than Elbit Medical) (save in consequence of the exercise of the EBRD Conversion Option).

16.15 Abandonment or Nationalisation

- (a) The Group abandons any of its material assets.
- (b) Any government or any Agency of that government takes, or states officially that it proposes to take, any step with a view to the seizure, expropriation, nationalisation or acquisition (whether compulsory or otherwise, in whole or in part, and whether or not for fair compensation) of any member of the Group or any of its assets, in a manner or to an extent that has a Material Adverse Effect.

16.16 Material Adverse Effect

Any event or series of events occurs, which, in the opinion of the Bank, is likely to have a Material Adverse Effect.

16.17 Registration for Trade

- (a) The shares of Elbit Medical are delisted or suspended for trade on the Tel Aviv Stock Exchange or NASDAQ Stock Exchange other than for reasons affecting such exchange or the shares traded therein generally, for a period exceeding 10 Banking Days.
- (b) The provisions of sub-clause (a) above shall not be applicable in the event of a voluntary de-listing carried out with the consent of the Bank.

16.18 Acceleration

On and at any time after the occurrence of an Event of Default, the Bank may, by notice to the Borrower:

- (a) cancel the Loan; and/or
- (b) demand that all or part of the Advance, together with accrued interest and all other amounts accrued under the Finance Documents (including without limitation pursuant to Clause 21 (Indemnities)) be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) demand that all or part of the Advance together with accrued interest and all other amounts accrued under the Finance Documents (including without limitation pursuant to Clause 21 (Indemnities)) be payable on demand, whereupon they shall immediately become payable on demand by the Bank; and/or
- (d) require the Borrower to procure that all Plaza Centers Loans are forgiven and that Plaza Centers has no further obligations or liabilities thereunder.

17. ACCOUNTS

17.1 Opening of Accounts

- (a) So long as any Advance remains outstanding, the Borrower shall maintain in its own name at the relevant branch of the Bank the following accounts, which shall be charged by way of a first ranking fixed charge in favour of the Bank as security:
 - (i) the Loan Account; and
 - (ii) the Revenue Account.
- (b) The relevant branch of the Bank is, at the date of this Agreement the Loan Office provided that the Bank may change the place of the relevant branch (or the

relevant branch to apply to a particular Account) by notice to the Borrower and any other party that is required to pay sums into such Account.

- (c) The following provisions of this Clause shall govern the operation of the Accounts, provided that:
 - (i) the Borrower shall also complete the Bank's standard account mandate form for each Account; and
 - (ii) the Bank's standard terms and conditions, if any, applicable to similar accounts maintained with the Bank and in force from time to time shall apply to the operation of the Accounts and the rights and obligations of the Bank and the Borrower in relation thereto (subject to any exceptions specifically agreed, in writing, between Borrower and the Bank).

Should there be any conflict between the provisions of this Agreement and such standard terms and conditions, then this Agreement shall prevail. The Bank shall send the Borrower a copy of any new set of standard terms and conditions promptly following their issuance.

- (d) The Bank and the Borrower may agree that a further account(s) is/are required to deal with any category of payments or receipts not contemplated by the following provisions of this Clause 17 (Accounts). In such case, the Bank and the Borrower shall agree upon procedures and rules to govern the operation of such further account or accounts in a supplement to this Clause and, once agreed, such supplement shall be deemed to form part of this Clause 17 (Accounts). The Bank shall send a copy of any such supplement to the Borrower.

17.2 Loan Account

- (a) No sums shall be paid into the Loan Account without the prior agreement of the Bank.
- (b) Whenever the Borrower requires to make a withdrawal from the Loan Account, it shall give to the Bank not less than three (3) Business Days' notice of such withdrawal in the form of the Disbursement Request (or in such other form as the Bank shall require). Any such withdrawal may only be for the purposes of:
 - (i) funding Equity Contributions in terms of Clause 3 above; or
 - (ii) as the Bank may otherwise permit in writing.
- (c) Each Disbursement Request shall specify the bank and account number of the payee to whom such payment is made and the Bank shall transfer the sum in question to such account.

17.3 Revenue Account

The Borrower shall procure that all Revenues which are required in order to execute a mandatory prepayment in accordance with the terms of Clause 6.2 above are paid directly to the Revenue Account.

17.4 General provisions relating to Accounts

- (a) The Borrower undertakes to ensure that no Account is closed without the prior written consent of the Bank and the Borrower.
- (b) Without prejudice to any other rights of the Bank under the Financing Documents, if at any time a Default has occurred or is continuing, the Borrower shall not make any withdrawals from the Accounts (other than in order to repay Financing Principal or Financing Charges due to the Bank), without the prior written consent of the Bank.
- (c) Each Account shall earn interest at such rate(s) as may be agreed from time to time by the Borrower and the Bank. All interest earned on the balance standing to the credit of an Account shall be credited to the Account in question and the Bank is irrevocably authorised and instructed so to credit such interest.
- (d) No Account may go into overdraft and the Borrower shall not issue an instruction with respect to an Account, and the Bank shall not comply with an instruction, to the extent that it would cause the relevant Account to go into overdraft.
- (e) The Borrower shall not create or permit to subsist any Security Interest on all or any part of the Accounts, other than any Security Interests created by the Security Documents, nor assign transfer or otherwise dispose of all or any part of its right or title to or interest in the Accounts.
- (f) The Borrower irrevocably and unconditionally authorises and instructs the Bank to act upon instructions received by it from the Borrower and to make any other appropriations, payments and transfers into or between any of the Accounts which this Agreement expressly provides should be made by the Bank.
- (g) To the extent that the Borrower gives any instructions (but only to this extent), the Bank acts as agent for the Borrower.
- (h) No person other than the Bank and/or the Borrower may give any instructions or requests to the Bank for any payments, transfers or withdrawals from any of the Accounts.
- (i) No amounts may be withdrawn or transferred from any of the Accounts, and the Borrower may not give any instructions in relation to any of the Accounts, except in accordance with the express terms of this Agreement.
- (j) The Borrower shall ensure that all moneys paid to it from an Account in response to any instructions given by it are applied only in discharging the obligations in respect of which they were paid from the relevant Account (or as otherwise permitted under this Agreement).

- (k) The Bank:
 - (i) shall be entitled to act in reliance on any certificate or document delivered to it in support of any of the matters contemplated by this Clause 20 (Accounts); and
 - (ii) shall not be obliged to enquire into any of the underlying transactions or to verify any of the contents of any such certificate or document.
- (l) The Borrower acknowledges that neither any insufficiency of funds in the Accounts (or any of them), nor any inability to apply any funds in the Accounts (or any of them) against any or all amounts owing under this Agreement, shall at any time limit, reduce or otherwise affect the Borrower's payment obligations under this Agreement.
- (m) If on any date the Bank is requested or required to make one or more payments from any of the Accounts (not being a sum payable to the Bank) and there is an insufficient balance on that Account to meet those payments in full, then the Bank may select in which order and to what extent such payments shall be made, but without liability or responsibility as a consequence of such application.

18. SECURITY

18.1 Effective Date

The Borrower shall ensure that the security arrangements set forth in this Clause 18 (Security) are in effect and perfected on the date of signing of this Agreement, unless otherwise agreed in writing by the Bank.

18.2 Charges

The Charges and Charge over Accounts shall serve as security for the Loan provided, however, that the recourse of the Bank shall not be limited to such security.

18.3 Pledge of Elscint Shares

The Bank shall agree to release the pledge over 615,000 ordinary shares of Elscint Ltd. upon receipt of a prepayment of principal of the Advance in the amount of US\$ 3,000,000 (three million US Dollars). This prepayment shall be in addition to any payment due pursuant to Clause 5.1 (Advance) or Clause 6.2 (Mandatory Prepayment). The provisions of this Clause 18.3 do not derogate from the provisions of Clause 15.8 (Negative Pledge)

19. FEES AND EXPENSES

19.1 Initial and special costs

The Borrower shall forthwith on demand pay the Bank the amount of all reasonable costs and expenses (including legal fees in a pre-agreed amount) incurred by the Bank in connection with:

- (a) the drafting, negotiation and closing of:
 - (i) the Finance Documents and any other documents referred to in this Agreement; and
 - (ii) any other Finance Document executed after the date of this Agreement; and
- (b) the examination of any future Project in respect of which an Equity Contribution is to be made; and
- (c) any amendment, waiver, consent or suspension of rights (or any proposal for any of the foregoing) requested by or on behalf of the Borrower and relating to a Finance Document or a document referred to in any Finance Document.

19.2 Enforcement costs

The Borrower shall forthwith on demand pay to the Bank the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

19.3 Retention

The Bank may apply amounts held in any Account toward payment in full of any fees, costs and expenses referred to in this Clause 19 (Expenses).

19.4 VAT

Any fee or expense referred to in this Clause 19 (Fees and Expenses) is exclusive of any applicable value added tax or any other tax which might be chargeable in connection with that fee or expense. If any value added tax or other tax is so chargeable, it shall be paid by the Borrower at the same time as it pays the relevant fee or expense.

20. STAMP DUTIES

The Borrower shall pay, and forthwith on demand indemnify the Bank against any liability it incurs in respect of, any stamp, registration or similar tax which is or becomes payable in connection with the entry into, registration, recording, performance or enforcement of any Finance Document and any ancillary documentation relating thereto.

21. INDEMNITIES

21.1 Currency indemnity

- (a) If the Bank receives an amount in respect of the Borrower's liability under the Finance Documents or if that liability is converted into a claim, proof, judgment or order in a currency other than the currency (the "**contractual currency**") in which the amount is expressed to be payable under the relevant Finance Document:
- (i) the Borrower shall indemnify the Bank as an independent obligation against any loss or liability arising out of or as a result of the conversion;
 - (ii) if the amount received by the Bank, when converted into the contractual currency at a market rate in the usual course of its business is less than the amount owed in the contractual currency, the Borrower shall forthwith on demand pay to the Bank an amount in the contractual currency equal to the deficit; and
 - (iii) the Borrower shall forthwith on demand pay to the Bank any exchange costs and taxes payable in connection with any such conversion.
- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

21.2 Other indemnities

The Borrower shall forthwith on demand indemnify the Bank against any loss or liability which the Bank incurs as a consequence of:

- (a) the occurrence of any Default;
- (b) the operation of Clause 16.21 (Acceleration);
- (c) any payment of principal or an overdue amount being received from any source otherwise than on the last day of a relevant Interest Period or other Interest Period provided for in Clause 8.3 (Default Interest) relative to the amount so received; or
- (d) (other than by reason of negligence or default by the Bank) an Advance not being made after the Borrower has delivered a request for the Advance, or an Advance (or part of the Advance) not being prepaid in accordance with a notice of prepayment.

The Borrower's liability in each case includes any loss of margin or other loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document, any amount repaid or prepaid or any Advance.

22. EVIDENCE AND CALCULATIONS

22.1 Accounts

Accounts maintained by the Bank in connection with this Agreement are prima facie evidence of the matters to which they relate.

22.2 Certificates and determinations

Any certification or determination by the Bank of a rate or amount under the Finance Documents is, in the absence of manifest error, prima facie evidence of the matters to which it relates.

22.3 Interest Calculations

Interest accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days.

23. AMENDMENTS AND WAIVERS

23.1 Amendments

Any term of the Finance Documents may be amended or waived with the agreement of the Borrower and the Bank.

23.2 Waivers and Remedies Cumulative

The rights of the Bank under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

24. CHANGES TO THE PARTIES

24.1 Transfers by Borrower

The Borrower may not assign, transfer, novate or dispose of any of, or any interest in, its rights and/or obligations under the Finance Documents.

24.2 Transfers by Bank

- (a) The Bank may at any time assign, transfer or novate all or any part of the Loan and/or all or any of its rights and/or obligations under this Agreement to another bank, financial institution or securitisation vehicle ("**Assignee Lender**"). If, as a result of any such assignment, transfer or novation, the Bank or its Affiliate will no longer

remain responsible under this Agreement, such assignment, transfer or novation shall be subject to the prior written consent of the Borrower (which consent shall not be unreasonably withheld).

- (b) The Borrower shall execute and do all such transfers, assignments, novations, assurances, acts and things as the Bank may require for perfecting and completing any such assignment, transfer or novation, and releasing the Bank from and imposing on the Assignee Lender the Bank's obligations under this Agreement to the extent the same are transferred, assigned or novated. All agreements, representations and warranties made in this agreement shall survive any assignment made pursuant to this clause and shall also inure to the benefit of all Assignee Lenders.

24.3 Reference Banks

If a Reference Bank ceases to exist, the Bank shall (in consultation with the Borrower) appoint another bank or financial institution to replace that Reference Bank.

25. DISCLOSURE OF INFORMATION

Subject to all applicable laws and regulations, the Bank may disclose to its Affiliates or any person with whom it is proposing to enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement:

- (a) a copy of any Finance Document; and
- (b) any information which the Bank has acquired under or in connection with any Finance Document.

26. SET-OFF

The Bank may set off any matured obligation owed by the Borrower under the Finance Documents (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off an amount estimated by it in good faith to be the amount of that obligation.

27. SEVERABILITY

If a provision of any Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the validity or enforceability in that jurisdiction of any other provision of the Finance Documents; or

- (b) the validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents.

28. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

29. NOTICES

29.1 Giving of notices

All notices or other communications under or in connection with the Finance Documents shall be given in writing and, unless otherwise stated may be made by letter or facsimile. Any such notice will be deemed to be given as follows:

- (a) if by letter, when delivered personally or on actual receipt; and
- (b) if by facsimile, when received in legible form.

However, a notice given in accordance with the above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.

29.2 Addresses for notices

- (a) The address and facsimile number of the Borrower are:

Elbit Ultrasound (Netherlands) B.V.
239 Keizergracht
EA 1016 Amsterdam
Netherlands

Facsimile: +31 20 344 9561
Attention: Luc Ronsmans

With a copy to:

Elbit Medical Imaging Ltd.
13 Moses Street
Tel Aviv
Israel 67442

Facsimile: +972 3 6953080
Attention: Shimon Yitzhak, President

or such other as the Borrower may notify to the Bank by not less than five Business Days' notice.

- (b) The address and facsimile number of the Bank are:

Bank Hapoalim B.M.
 Head Office, Corporate Business Division
 41-45 Rothschild St.
 Tel-Aviv, 65874
 Israel

Facsimile: +972 3 567 3849

Attention: Manager of the Infrastructure, Tourism and Trade Finance.

with a copy to:

Herzog, Fox & Neeman
 Asia House
 4 Weizman Street
 Tel Aviv

Facsimile: +972-3-696-6464

Attention: Alan Sacks

or such other as the Bank may notify to the Borrower by not less than five Business Days' notice.

30. JURISDICTION

30.1 Submission

The Borrower irrevocably agrees for the benefit of the Bank that any legal action arising out of or relating to any Finance Document may be brought in the courts of Tel-Aviv Jaffa and irrevocably submits to the non-exclusive jurisdiction of such courts and, without prejudice to the foregoing, further submits to the non-exclusive jurisdiction of such other courts as shall be designated by the Bank as being an appropriate forum.

31. WAIVER OF IMMUNITY

The Borrower irrevocably and unconditionally:

- (a) agrees that if the Bank brings proceedings against it or its assets in relation to a Finance Document, no immunity from those proceedings (including, without limitation, suit, attachment prior to judgment, other attachment, the obtaining or judgement, execution or other enforcement) will be claimed by or on behalf of itself with respect to its assets;
- (b) waives any such right of immunity which it or its assets now has or may subsequently acquire; and

- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with those proceedings, including, without limitation, the making, enforcement or execution against any assets whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in those proceedings.

32. GOVERNING LAW

This Agreement is governed by the laws of the State of Israel.

33. THIRD PARTIES

The parties intend that no term of the Agreement may be enforced by any person who is not a party to the Agreement.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

[This page has been intentionally left blank]

Index of Schedules

Schedule	Description
1	Schedule of Conditions Precedent
2	Initial Commercial Centers
3	Borrower Funded Subsidiaries and Projects
4	Subordination Agreement
5	Form of Elbit Guarantee
6	Form of Guarantee
7	Repayment Schedule
8	Form of Loan Assignment

SCHEDULE 1

CONDITIONS PRECEDENT

1. Constitutional documents

A copy of the constitutional documents of the Borrower and each Intermediary Company.

2. Borrower corporate authorisations

- (a) Copies of resolutions of the board of directors and shareholders' meeting of the Borrower approving the terms of, and transactions contemplated by, the Finance Documents executed by it;
- (b) an approval from counsel to the Borrower confirming which persons are authorised to sign the Finance Documents on behalf of the Borrower and to sign and/or despatch all documents and notices to be signed and/or despatched by the Borrower under or in connection with the Finance Documents; and
- (c) a certificate of the Borrower confirming that the borrowing of the Loan in full would not cause any borrowing limit binding on the Borrower to be exceeded.

3. Finance Documents and related documents

Originals of the following duly executed by all parties to them:

- (a) this Agreement; and
- (b) each Security Document.

4. Authorisations

A copy of any specific licenses or consents required for the consummation of the transactions contemplated under the Agreement.

5. Security matters

- (a) Evidence that the Security Documents, other than the pledge over shares in Sadyba Center S.A., have been duly executed by the Borrower and have been perfected and registered at any relevant companies' or other register.
- (b) Within 90 days of signing this Agreement, evidence that a share pledge over its shares in Sadyba Center S.A. shall have been duly executed by Plaza Centers and have been perfected and registered at any relevant companies or other register.
- (c) Within 270 (two hundred and seventy) days of signing this Agreement, evidence that a mortgage over the Prague commercial center located at U.

Nekladokaka Padrezi Praha-3. Czech Republic shall have been duly executed by the Borrower and have been perfected and registered at any relevant companies' or other register, provided however that the Borrower's obligation to register or to cause the registration of such mortgage shall automatically lapse on such two hundred and seventieth day if, prior to that date:

- (i) no Event of Default shall have occurred; and
- (ii) no event of default shall have occurred in any loan agreement entered into between the Bank and Europe-Israel or any of its Subsidiaries

6. Accounts

Evidence that each of the Loan Account and the Revenue Account have been opened in accordance with the Agreement.

7. Legal Opinions

- (a) From Marc Lavine, Israeli in-house legal adviser to the Borrower, addressed to the Bank;
- (b) From Czech legal counsel to the Borrower, addressed to the Bank; upon execution of the pledge pursuant to paragraph 5(b) of this Schedule 1; and
- (c) From Polish legal counsel to the Borrower, addressed to the Bank, upon registration of the pledge over the shares in Sadyba; and
- (d) From Dutch legal counsel to the Borrower, addressed to the Bank, upon registration of the pledge over the shares in Plaza Centers.

8. Fees

Receipt of evidence that the Borrower has paid all fees, costs and expenses of the Bank and its advisers in accordance with the Agreement.

9. Valuation

Within 120 days of signing this Agreement, the Net Asset Appraisal referred to in Section 14.11(b) of the Agreement.

10. Loan Repayment Undertaking

An undertaking from Plaza Centers that any repayment by it of loans to the Borrower shall be made to account number _____ at the Loan Office.

11. Group Structure

A group structure chart showing each Borrower Subsidiary and the holding structure of the Borrower by Europe Israel.

SCHEDULE 2
INITIAL COMMERCIAL CENTERS

1. Alba Plaza
2. Miskolc Plaza
3. Szeged Plaza
4. Debrecen Plaza
5. Krakow Plaza
6. Csepel Plaza
7. Pecs Plaza
8. Gyor Plaza

SCHEDULE 3
BORROWER'S FUNDED SUBSIDIARIES
AND PROJECTS

SCHEDULE 4
SUBORDINATION AGREEMENT

SCHEDULE 5
FORM OF ELBIT GUARANTEE

SCHEDULE 6
FORM OF THE GUARANTEE

SCHEDULE 7
REPAYMENT SCHEDULE

SCHEDULE 8
FORM OF LOAN ASSIGNMENT

SIGNATORIES

Bank

BANK HAPOALIM B.M.

By: _____

Borrower

ELBIT ULTRASOUND (NETHERLANDS) B.V.

By: _____

**AMENDED AND RESTATED
LOAN AGREEMENT**

DATED 9 July 2003

U.S.\$ 25,000,000

MULTICURRENCY TERM LOAN

BETWEEN

**ELBIT ULTRASOUND (NETHERLANDS) B.V.
as Borrower**

AND

**BANK HAPOALIM B.M.
as Bank**

**HERZOG FOX & NEEMAN
Asia House, 4 Weizmann Street
Tel-Aviv, Israel
Tel: 03 692 2020
Fax: 03 696 6464**

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statements No. 333-117509 and No. 333-130852 on Form S-8 of our report dated April 9, 2006 relating to the consolidated financial statements of Elbit Medical Imaging Ltd. and its subsidiaries, (which report expresses an unqualified opinion and includes explanatory paragraphs relating to: (1) the differences between accounting principles generally accepted in Israel and accounting principles generally accepted in the United States of America; (2) the presentation of the “reported amounts” and “adjusted values”; (3) claims that have been filed against Group companies and for some of those claims petitions have been filed for certification as class actions; (4) the adoption of Accounting Standard No. 19; and (5) the translation of New Israeli Shekel amounts into U.S. dollar amounts), appearing in this Annual Report on Form 20-F of Elbit Medical Imaging Ltd. for the year ended December 31, 2005.

Brightman Almagor & Co.
Certified Public Accountants
A member firm of Deloitte Touche Tohmatsu

Tel-Aviv, Israel
June 28, 2006

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Elbit Medical Imaging Ltd.:

We consent to the incorporation by reference in the registration statement on Form S-8 of Elbit Medical Imaging Ltd. of our report dated April 5, 2006, with respect to the consolidated balance sheets of Plaza Centers (Europe) B.V. and Subsidiaries as of December 31, 2005 and 2004, and the related consolidated statements of income, changes in shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2005, which report appears in the December 31, 2005 Annual Report on Form 20-F of Elbit Medical Imaging Ltd.

KPMG Hungária Kft.

Budapest, Hungary
June 28, 2006

CONSENT OF INDEPENDENT AUDITOR

We hereby consent to the incorporation by reference in this registration statement of Elscint Ltd. on Form S-8 (relating to the registration of shares to be used under the Elscint Ltd. 2001 Incentive Plan to Employees and Officers and the Elscint Ltd. 2003 Incentive Plan to Employees and Officers, File Number 333-117519) of our report dated April 6, 2006 relating to the financial statements of B.E.A. Hotels N.V. for the year ended December 31, 2005, which are included in Elscint Ltd. Annual Report on Form 20-F filed June 30, 2006.

Amsterdam, June 23, 2006

MAZARS PAARDEKOOPER HOFFMAN N.V.

F.D.N. Walta RA

MAZARS PAARDEKOOPER HOFFMAN N.V.

Mazars Tower, Delflandlaan 1 - P.O. box 7266 - 1007 JG Amsterdam - amsterdam.audit@mazars.nl
Tel: +31 (0)20-2060500 - Fax: +31 (0)20-6448051

Accountants - Tax advisers - Management consultants

Mazars Paardekooper Hoffman N.V., with its registered office in Rotterdam (Trade register Rotterdam nr. 24389296).

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Elbit Medical Imaging Ltd.:

We consent to the incorporation by reference in the registration statement (No. 333-117509) on Form S-8 of Elbit Medical Imaging Ltd. and in the Registration Statement (No. 333-130852) on Form S-8 of Elbit Medical Imaging Ltd. of our report dated March 20, 2006 with respect to the consolidated financial statements of Gamida Cell Ltd. as of December 31, 2005, included in the Annual Report on Form 20-F of Elbit Medical Imaging Ltd. For the year ended December 31, 2005, filed with the Securities and Exchange Commission.

Tel Aviv Israel
June 21, 2006

KOST, FORER GABBAY & KASIERER
A Member of Ernst & Young Global



CONSENT OF INDEPENDENT AUDITOR

We hereby consent to the incorporation by reference in the registration statements of Elbit Medical Imaging Ltd. on Forms S-8 (relating to the registration of shares to be used under the Elbit Medical Imaging Ltd. 2001 Incentive Plan to Employees and Officers, File Number 333-117509 and File Number 333-130852) of our report dated [] relating to the financial statements of B.E.A. Hotels N.V. for the year ended December 31, 2005, which are included in Elbit Medical Imaging Ltd. Annual Report an Form 20-F filed June __, 2006.

MAZARS PAARDEKOOPEL HOFFMAN

Amsterdam, June __, 2006

MAZARS PAARDEKOOPEL HOFFMAN

MAZARS Tower, **DELFLANDLAAN 1** - Postbus 7266 - 1007 JG AMSTERDAM - amsterdam@mazars.nl
TEL: 020 - 2060500 FAX: 020 - 6448051

ACCOUNTANTS - BELASTINGADVISEURS - JURIDISCHE ADVISEURS - ORGANISATIEADVISEURS
MAZARS PAARDEKOOPEL HOFFMAN IS EEN MAATSCHAP MEDE BESTAANDE UIT PRAKTIJKVENNOOTSCHAPPEN

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this registration statement of Elbit Medical Imaging Ltd. on Form S-8 (relating to the registration of shares to be used under the Elbit Medical Imaging Ltd. 2001 Incentive Plan to Employees and Officers, File Number 333-117509) and in the Registration Statement of Elbit Medical Imaging Ltd. on Form S-8 (relating to the registration of shares to be used under the Elbit Medical Imaging Ltd. 2001 Incentive Plan to Employees and Officers, File Number 333-130852) of our report dated [_____] relating to the consolidated financial statements of Elbit Medical Imaging Ltd. and subsidiaries for the year ended December 31, 2005, which are included in Elbit Medical Imaging Ltd. Annual Report on Form 20-F filed June __, 2006.

Brightman Almagor & Co.
Certified Public Accountants
A member firm of Deloitte Touche Tohmatsu

Tel-Aviv, Israel
June __, 2006

**ELBIT MEDICAL IMAGING LTD.'S
CODE OF ETHICS AND BUSINESS CONDUCT
FOR DIRECTORS, OFFICERS AND OTHER EMPLOYEES**

1. Preamble - General:

This Code of Ethics and Business Conduct (the “**Code**”) applies to Elbit Medical Imaging Ltd. and all and any direct and indirect, wholly owned subsidiaries (“**Subsidiaries**”), (together referred to herein as the “**Company**”) and sets forth our Company’s policies regarding ethical business conduct and principles guiding the activities of our directors, officers and other employees. The purpose of this Code is to promote a culture of honesty, integrity and respect for law and the people with whom we work.

The Company puts great emphasis on ensuring professional business conduct and ethical behavior by its directors, officers and other employees. We expect each Member to use sound judgment to help us maintain appropriate compliance procedures and to carry out our business in compliance with laws and high ethical standards. Each Member of our Company is expected to read this Code and demonstrate personal commitment to the standards set forth in this Code. Our officers and other supervising employees are expected to be leaders in demonstrating this personal commitment to the standards outlined in this Code and recognizing indications of illegal or improper conduct.

All Members are expected to report appropriately any indications of illegal or improper conduct.

Any Member who does not comply with the standards set forth in this Code may be subject to discipline in light of the nature of the violation, including termination of employment or other service with the Company.

While the Company acknowledges that it is not possible to reduce into writing all illegal or improper act or practice, by adopting this Code, it endeavors to set forth the core requirements for its directors, officers and other employees of the ethical and professional behavior expected and required from them.

2. Definitions:

In this Code, unless context otherwise requires:

- 2.1 **Member** shall mean the Company’s principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions, as well as all other directors, officers and employees of the Company;
- 2.2 **Confidential Information** shall mean non public information concerning the Company or concerning third parties with whom the Company does business.
- 2.3 **Designated Person** shall mean a person designated by the Board of Directors to receive information regarding Violations or potential Violations in accordance with Article 9 below. The Designated Person elected by the Company’s Board of Directors is the Company’s General Counsel who can be reached at **Address:** 13 Mozes St., Tel Aviv, 97442, Israel **Email,** mlavine@europe-israel.com **Tel**+972-3-6086001 **Fax** +972-3-6910120
- 2.4 **The Company’s Guidelines for Internal Disclosure of Information** shall mean a set of guidelines to be adopted by the Company under Section 302 and 404 of the Law.
- 2.5 **SEC** shall mean the US Securities and Exchange Commission.
- 2.6 **Business Courtesy** shall mean any gift, benefit, advantage, bribe or gain, whether in money, goods, service or otherwise, provided to or received by a Member;
- 2.7 **Articles of Association** shall mean the Memorandum and Articles of Association of the Company as amended from time to time;
- 2.8 **Sexual Harassment Act** shall mean the Sexual Harassment Prevention Act of 1998;
- 2.9 **Law** shall mean the Sarbanes Oxley Act 2002;

**ELBIT MEDICAL IMAGING LTD.'S CODE OF ETHICS AND BUSINESS CONDUCT
FOR DIRECTORS, OFFICERS AND EMPLOYEES**

3. *Honesty and Ethical Conduct; General Standards:*

Each Member shall at all times act honestly, ethically and in compliance with law in every aspect of their relationship with the Company, its business, assets and operations.

Members should conduct themselves in a manner that, if their conduct were fully disclosed, the conduct would not detract from the Company's reputation or public goodwill or expose the Company to criticism or liability for failure to comply with applicable law or to practice principles of sound corporate governance.

Members shall act in good faith, responsibly, with due care, prudence and diligence and shall strive to foster a Company culture of honesty, integrity and accountability.

Members shall be accountable for their compliance with this Code.

4. *Conflict of Interests:*

We expect all Members to avoid allowing their private interests to interfere, or appear to interfere, with the interests of our Company as a whole. Each Member shall be under a duty to the Company, to act in a bona fide manner for the benefit thereof, and inter alia:

- 4.1 Promptly disclose to the Company any personal interest such Member may have in a proposed or other transaction of the Company including the nature of such conflict of interest;
- 4.2 Refrain from any act or omission which may give rise to any conflict of interests between the Member's private interest or interest of a family relative and the interest of the Company, including, without limitation, attempting to give or steer Company's business transactions to companies in which a family relative has a financial or other interest unless such transaction has been disclosed to the Designated Person or any member of the Company's Audit Committee and the appropriate approvals of our Company have been obtained;
- 4.3 Refrain from any act or omission, which may result in a competition with the business of the Company. Without limiting the foregoing, refrain from using trade secrets and other nonpublic know-how and information learned at our Company in activities outside our Company or in other ways that could harm our business;
- 4.4 Refrain from any act or omission which may adversely affect such Member's ability to perform his or her Company's duties objectively and effectively.
- 4.5 Refrain from taking any advantage of any business opportunity that such Member learns through its employment or association with the Company with the purpose of benefiting such Member or any third party;
- 4.6 Refrain from using corporate property, information or position for personal gain;
- 4.7 Refrain from accepting or presenting any Business Courtesy, except directors compensation fees as approved by the Company's general meeting and/or Articles of Association. These prohibitions do not apply to items of truly nominal value such as generally free promotional items, assuming these items are not otherwise prohibited by applicable law or custom. Members should never accept anything that would appear to create a conflict of interest.
- 4.8 Promptly disclose to the Company all and any information or document which such Member receives in his or her capacity as a Member, and which concerns the Company, in any manner whatever.

In addition to the above, Members are expected to comply with any other corporate policies of the Company in effect from time to time.

5. *Insider Trading and Confidentiality; Accuracy of Records and Reporting:*

- 5.1 Each Member shall be prohibited from using Confidential Information for such Member's own benefit or disclosing it to any third party for their improper use. Each Member's personal securities transactions shall be conducted in consistency with this Code and the relevant applicable laws and regulations and in such a manner so as to avoid any actual or potential conflict of interest, the appearance of conflict of interest,

**ELBIT MEDICAL IMAGING LTD.'S CODE OF ETHICS AND BUSINESS CONDUCT
FOR DIRECTORS, OFFICERS AND EMPLOYEES**

or any abuse of such Member's position of trust and responsibility within the Company.

- 5.2 In addition, applicable securities rules also prohibit selective disclosure of Confidential Information to those outside the Company in most circumstances. Therefore, all Members are expected to assist the Company in keeping all Confidential Information strictly confidential unless and until our Company makes an authorized press release or other authorized public communication or filing.
- 5.3 Our policy is to provide public dissemination of material information about our business only through our employees authorized for this purpose. Employees are not under any circumstance to discuss our Company's financial, business or other information with the press (except for those employees expressly authorized for this purpose) or on any Internet or other "discussion board," "chat room," or similar forum. Requests from the media, analysts or stockholders about our company must be forwarded to our Chief Executive Officer or Chief Financial Officer for review by our professional staff having responsibility for these matters.
- 5.4 Members are expected to follow and support the effectiveness of the Company's disclosure controls and procedures outlined in ***The Company's Guidelines for Internal Disclosure of Information*** and ensure full, fair, accurate, timely and understandable disclosure in the Company's reports and documents that it files with, or submits to any official or governmental authority including to the SEC and in other public communications made by the Company.

6. *Prevention of Sexual Harassment*

Members shall adhere to the provisions of the Sexual Harassment Act and shall not harass, sexually or otherwise, any other person.

The Company shall issue Sexual Harassment Prohibition Policy to which all Members shall adhere and be bound by.

7. *Fair Dealing*

Members shall deal fairly with the Company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

8. *Protection and proper use of Company assets*

Members shall protect the Company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the Company's profitability. All Company assets should be used for legitimate business purposes.

9. *Waivers*

Any waiver of any provision of this Code for any Member must be approved, if at all, in advance by the Board of Directors of the Company. Any such waivers granted which are required to be disclosed by applicable law will be publicly disclosed in the Company's Annual Report on Form 20F.

10. *Whistleblower Policy - Reporting of illegal or unethical behavior:*

- 10.1 If you wish to report or discuss any problem concerning our Company or any violation or apparent or possible violation of any law, regulation or this Code, including accounting, internal accounting controls, or auditing matters relating to our Company ("Violation"), please promptly inform your supervising manager or report the matter to the Designated Person or any Director or Officer ("Addressee"). Any such Addressee, to whom a Violation is reported, other than the Company's General Counsel, shall immediately report same to the Company's General Counsel. If you wish to communicate any matter anonymously, you are free to do so, by mailing in writing

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without indicating your name or address to the Designated Person marking the envelope "Personal & Confidential". These reports will be received by the Designated Person and handled in accordance with the procedures for investigating and resolving concerns outlined below under the heading "Enforcement".

- 10.2 Reports shall be treated confidentially, except as necessary to conduct the investigation and take any remedial action, in accordance with applicable law.
- 10.3 Members shall be under no obligation to follow a directive, which, if followed, may result in a possible or apparent fraud or Violation.
- 10.4 Members shall be obliged to assist in an investigation or any other proceedings regarding any Violation in good faith.
- 10.5 No Member will be subject to retaliation by the Company for reporting good faith concerns to the Company and for the bona fide execution of the provisions of this Article 9. In addition, the Company may not discharge or otherwise discriminate in any manner against, or threaten or harass, a Member for any lawful act by the Member to provide information or assist in an investigation by the Company or any other governmental authority or agency, of any Violation.
- 10.6 It is a violation of the Company's standards for any Member to communicate a report claiming a Violation, which report the Member knows to be false.

11. Enforcement:

- 11.1 The Designated Person will make a report to the Chairman of the Audit Committee, at each Board of Directors meeting or once per calendar quarter if no Board meeting is held during the quarter, of all reports of possible Violations received or any other matter disclosed to the Designated Person in terms of Article 9 above, which constitutes illegal or unethical behavior, the status of the initial investigation, the Designated Person's recommendation for further investigation and/or action, and the basis for the Designated Person's recommendation. In determining illegal or unethical behavior, the Designated Person may consult with any internal or external legal or other advisors. Reports of possible Violations or illegal or unethical behavior will be initially investigated by the Designated Person. The Designated Person may, in his discretion, include other employees and/or management (not including those named in the report of possible Violation or illegal or unethical behavior) to assist in the investigation. Upon completion of the initial investigation, the Designated Person will make a determination whether further investigation and/or action is required. If the Designated Person believes further investigation and/or action is required, the Designated Person will immediately forward the report and the results of the initial investigation to the Chairman of the Audit Committee. The Audit Committee may, in its discretion, assume responsibility for evaluating any possible Violation or illegal or unethical behavior (even those deemed to require no further investigation and/or action by the Designated Person) and directing or conducting any investigation or may delegate any portion of such responsibility to the Board of Directors, another committee, the Designated Person or another person or entity. If the Audit Committee chooses to assume responsibility for evaluating any possible Violation or illegal or unethical behavior or directing or conducting any investigation where the investigation concerns a possible Violation or illegal or unethical behavior by a member of the Board of Directors, the Audit Committee shall not delegate such investigation to the Board of Directors or any other committee but shall itself, not including that member, assume such responsibility. The Audit Committee shall have the authority to engage independent counsel and other advisers, as it deems necessary, to assist in its investigation and decision process.
- 11.2 After conducting the investigation, the results will be evaluated and the Company shall authorize such swift response, follow-up and preventive actions, if any, as are deemed necessary and appropriate to address the substance of the reported possible Violation or illegal or unethical behavior. The Company reserves the right to take whatever action it believes appropriate, up to and including discharge of any employee determined to have engaged in improper conduct or termination of any services provided by any Member to the Company.

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12. Compliance with Laws

- 12.1 All Members must respect and obey both the letter and the spirit of the laws of the countries in which we operate. Members have no mandate to contravene any law or regulation on behalf of the Company.
- 12.2 Ignorance of the law is no excuse. Thus, Members should become familiar with the applicable laws and regulations that apply to the nature of their work or function. Although not all Members are expected to be experts in these laws, it is important to know enough to determine when to seek advice from supervisors, managers or other appropriate personnel.

13. Review:

The Company's Designated Person shall annually review this Code and suggest to the Company's Board of Directors, any amendments, corrections or additions thereto ("**Amendments**"). Any such Amendments shall be brought to the approval of the Board of Directors at its meeting called for the approval of the Company's relevant Annual Financial Statement.

14. Implementation:

Members are expected to read and understand this Code, uphold these standards in a day-to-day activities and comply with all applicable policies, procedures and laws.

15. Reservation and Conflicts:

- 15.1 This Code shall not replace or be construed as undermining in any manner any provision, order, instruction, regulation, section or article of any law, regulation or directive ("Regulatory Provision"), to which any Member and/or the Company is subject.
- 15.2 In the event of any conflict or discrepancy between the provisions of this Code and any Regulatory Provision, the Member is strictly instructed to follow the provisions of Article 8 of this Code.

16. General:

- 16.1 This Code may be modified, substituted or amended from time to time, by the Company.
- 16.2 This Code may not be construed as unilaterally substituting or altering any employment agreement with any employee of the Company.
- 16.3 This Code shall in no event be construed as allowing, conferring or in any way granting any rights of any kind to any a third party beneficiary, whether intended or incidental, and it is not intended for the benefit of any person or entity except the Company.
- 16.4 Please sign the acknowledgment form at the end of this Code of Ethics and Business Conduct and return the signed form to the Company's Human Resources Department indicating that you have received, read, understand and agree to comply with this Code.

**ELBIT MEDICAL IMAGING LTD.'S CODE OF ETHICS AND BUSINESS CONDUCT
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Approved by the Board of Directors of Elbit Medical Imaging Ltd. on:	<u>December 11, 2005</u>	Signature:	<u></u>
Amended on:	<u></u>	Signature:	<u></u>
Amended on:	<u></u>	Signature:	<u></u>

**ELBIT MEDICAL IMAGING LTD.'S CODE OF ETHICS AND BUSINESS CONDUCT
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**ACKNOWLEDGMENT OF RECEIPT
OF CODE OF ETHICS AND BUSINESS CONDUCT**

I have received and read the Code of Ethics and Business Conduct (the “**Code of Ethics**”) of Elbit Medical Imaging Ltd. and all and any direct and indirect, wholly owned subsidiaries, (collectively, the “**Company**”). I understand the standards and policies contained in the Code of Ethics and understand that there may be additional policies or laws specific to my job. I further agree to comply with the Code of Ethics.

I understand that my agreement to comply with the Code of Ethics does not constitute or give rise to a contract of employment or a guarantee or promise of any kind.

If I have questions concerning the meaning or application of the Code of Ethics, and of the Company’s policies, or the legal and regulatory requirements applicable to my job, I understand that I can consult my manager or the Designated Person or the Company’s General Counsel, knowing that my questions or reports to these persons will be maintained in confidence unless disclosure is required by law, regulation or any competent authority.

Employee Name

Signature

Date

Please sign and return this form to the Company’s Human Resources Department

EXHIBIT 12.1

Section 302 Certification by Principal Executive Officer and Principal Financial Officer

I, Shimon Yitzhaki, certify that:

1. I have reviewed this annual report on Form 20-F of Elbit Medical Imaging Ltd. (the "Company");
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 Company as of, and for, the periods presented in this report;
4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a- 15(e) and 15d-15(e)) for the Company 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 Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - (b) (Reserved)
 - (c) evaluated the effectiveness of the Company'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 Company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of Company'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 Company'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 Company's internal control over financial reporting.

Date: June 30, 2006

/s/ Shimon Yitzhaki
Shimon Yitzhaki
President & Chief Financial Officer

EXHIBIT 13.1

Section 906 Certification by Principal Executive Officer and Principal Financial Officer

In connection with the Annual Report of Elbit Medical Imaging Ltd. (the “Company”) on Form 20-F for the year ended December 31, 2005, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Shimon Yitzhaki, President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 that, to the best of my knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 30, 2006

/s/ Shimon Yitzhaki

Shimon Yitzhaki

President & Chief Financial Officer