

THIS LOAN SALE AGREEMENT ("**Agreement**") is entered into effective as of \_\_\_\_\_, 2013 ("**Effective Date**"), by and between **COMERICA BANK, a Texas banking association** ("**Seller**"), and the party whose name is set forth on the signature page hereof ("**Purchaser**"), for purposes of setting forth the terms and conditions upon which Seller agrees to sell, and Purchaser agrees to purchase, the loans listed in the schedule of loans ("**Schedule of Loans**") attached hereto as **Attachment 1**.

1. **Definitions.** The following terms shall be defined as set forth herein:

- 1.1 "**Affiliate**" is defined, in the case of any entity, as the entity's parent or any wholly- or partially-owned subsidiary of the entity or the entity's parent.
- 1.2 "**Agreement**", "**Seller**", "**Schedule of Loans**", and "**Purchaser**" have the meanings set forth in the introductory paragraph and this **Section 1**.
- 1.3 "**Assignment**" means, collectively, the Assignment of Loan Documents, Liens and Security Instruments, the Allonges to the Notes and the Assignment of Mortgage, all to be delivered by Seller to Purchaser at Closing in the form of **Attachment 2** to this Agreement with all blanks appropriately completed.
- 1.4 "**Certification of Principal Balances**" means the certificate delivered pursuant to **Section 4** of this Agreement.
- 1.5 "**Closing**" means the simultaneous performance by Seller and Purchaser of the acts herein provided to be performed at the Closing for purposes of selling the Loan Package to Purchaser.
- 1.6 "**Closing Date**" means \_\_\_\_\_, or such other date for the Closing as may hereafter be agreed to by Seller and Purchaser in writing; provided, however, that Purchaser acknowledges and agrees that Seller shall have no obligation to extend the Closing Date beyond \_\_\_\_\_.
- 1.7 "**Collateral Documents**" means the loan agreements, if any, pursuant to which the Loans were made and all guaranties, deeds of trust, mortgages, security agreements, pledge agreements and other documents, as applicable, which specifically and expressly secure the payment and/or performance of one or more of the Notes evidencing the Loans. Collateral Documents do not include any deeds of trust, mortgages, security agreements, pledge agreements or other documents which are Cross-collateralized. For the avoidance of doubt and not limitation, Collateral Documents do not include (a) documents evidencing or securing loans to H.K. Hotel Management, LLC and Hanna Karcho-Poselli; (b) the Spreader Agreement, Cross-Default and Cross-Collateralization Agreement

dated as of May 9, 2011; and (c) the Security Agreement (Membership Interest) dated as of May 9, 2011 signed by Hanna Karcho-Poselli.

- 1.8 "**Confidentiality Agreement**" means the Confidentiality Agreement signed by Purchaser for the benefit of Seller in connection with its examination of the Loan File.
- 1.9 "**Cross-collateralization**" and variations of such term mean any lien, security interest, pledge, collateral assignment, or other security or collateral which secures both (a) a loan or other obligation owed to Seller which is retained or held by Seller subsequent to the sale contemplated hereby, and (b) the Loans covered by this Agreement.
- 1.10 "**Cross-Collateralization Release Agreement**" shall have the meaning set forth in **Section 4** hereof.
- 1.11 "**Debtor**" means the borrower and each other person or entity who shall be liable for the payment or performance of all or any portion of the Loans or Collateral Documents relating to the Loans or who shall own any property that is subject to (or purported to be subject to) a security interest or other lien which secures all or any portion of the Loans or any Collateral Documents.
- 1.12 "**Deposit**" means 10% of the Purchase Price.
- 1.13 "**Excluded Documents**" means those documents and other materials and information that were not included by Seller in the Loan File made available to Purchaser by Seller and which Seller has deemed inappropriate to release to Purchaser, including, without limitation, (a) internal memoranda and correspondence (including electronic mail or other correspondence among personnel of Seller), (b) correspondence with legal counsel or regulatory authorities and attorney work product, (c) credit reports, (d) valuation or appraisal information, (e) information subject to confidentiality obligations, or (f) any document containing information that is prohibited from disclosure under internal Seller policies or applicable regulations.
- 1.14 "**File Review Date**" means \_\_\_\_\_.
- 1.15 "**Hazardous Substance Laws**" and "**Hazardous Substances**" shall have the respective meanings set forth in **Section 23** hereof.
- 1.16 "**Litigation**" means the pending lawsuit styled "Comerica Bank v. Ocean 4660 , LLC, et .al.", case no. 11-028447 (03), pending in the Circuit Court of the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida.
- 1.17 "**Loan(s)**" means (a) the obligations evidenced by a Note described on the Schedule of Loans as the same may have been modified, renewed or extended,

and (b) all rights, powers, guaranties, security interests and other liens arising under any such Note or any Collateral Document which secures such Note.

- 1.18 "**Loan File**" means the documents and other information made electronically available to Purchaser, upon signing the Confidentiality Agreement, on the CBRE website: [www.cbremarketplace.com/lauderdalebeachsidehotel](http://www.cbremarketplace.com/lauderdalebeachsidehotel), including those documents, pleadings and other papers filed in the Litigation. The Loan File does not include Excluded Documents.
- 1.19 "**Loan Package**" means all of the Loans evidenced by the Notes specifically described on the Schedule of Loans, all Collateral Documents related to the Loans, and the Loan File.
- 1.20 "**Note**" is defined as the executed promissory note or notes, together with any rider, addendum or amendment to the promissory note or notes, evidencing the indebtedness of Debtor to Seller under the Loans.
- 1.21 "**Property**" is defined as the property secured by the Collateral Documents.
- 1.22 "**Purchase Price**" means the purchase price for the Loan Package, which shall be \_\_\_\_\_ dollars (\$\_\_\_\_\_).
- 1.23 "**Released Parties**" shall have the meaning set forth in **Section 17** hereof.
- 1.24 "**Representatives**" has the meaning set forth in the Confidentiality Agreement.
2. **Terms and Conditions of Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell, assign, transfer, and convey to Purchaser, and Purchaser agrees to purchase and accept the assignment, transfer and conveyance from Seller, of all of Seller's rights, title, and interest, as of the time of Closing, in and to the Loan Package, without representation or warranty of any kind except as otherwise expressly set forth in this Agreement.
3. **Purchaser's Obligations.**
- 3.1 If the Deposit has not already been received by Seller as of the Effective Date, within two (2) business days following the Effective Date, Purchaser shall deliver to Seller the Deposit by federal wire transfer in accordance with the wiring instructions attached to this Agreement as **Attachment 4**, to be held by Seller and disbursed pursuant to this Agreement. The Deposit may be held with Seller's general funds and shall not be deposited in an interest-bearing or other account, and there shall be no interest earned on the Deposit. The Deposit shall be applied to the Purchase Price at the Closing. The failure of Purchaser to timely deliver the Deposit to Seller shall entitle Seller to terminate this Agreement immediately

upon delivery by Seller to Purchaser of written notice of termination, whereupon Seller shall have no further obligation or liability of any kind to Purchaser.

3.2 Purchaser shall pay to Seller at Closing, by wire transfer of immediately available funds in accordance with the wiring instructions attached to this Agreement as **Attachment 4**, the Purchase Price less the Deposit. All payments from any Debtor relating to the Loans, including principal and interest, made prior to the Closing shall belong to Seller provided that the Purchase Price shall be reduced by the principal amount of any principal payment or prepayment, as applicable, received by Seller between the Effective Date and the Closing Date. All such payments made after the Closing shall belong to Purchaser. Purchaser shall, however, promptly reimburse Seller for any payments made by a Debtor for which Purchaser has received credit against the Purchase Price in the event that a check, draft or other instrument tendered as payment upon any Loan prior to the Closing is dishonored or otherwise uncollectable for any reason.

3.3 **Conditions Precedent.**

(a) The obligation of Purchaser to purchase the Loans as contemplated by this Agreement is subject to the fulfillment on or prior to the Closing Date of each of the following conditions unless any such condition is expressly waived in writing by Purchaser:

(i) The representations and warranties of Seller contained in **Section 8** shall be true and correct as of the Closing Date with the same effect as though made at such time, and no default by Seller under this Agreement shall have occurred and be continuing on the Closing Date. Notwithstanding the foregoing, Seller shall have the right to update the representations contained in the Certification of Principal Balances and the same shall not constitute a failure of such representation to be true and correct;

(ii) Seller shall have in all respects performed all obligations and complied in all respects with all covenants and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing Date; and

(iii) Seller shall have delivered to Purchaser all of the deliverables set forth in **Section 4** that are required to be delivered by Seller on or before the Closing Date.

(b) The obligation of Seller to sell the Loans is subject to the fulfillment on or prior to the Closing Date of each of the following conditions unless any such condition is expressly waived in writing by Seller:

(i) Seller shall have received the Deposit from the Purchaser;

(ii) The representations and warranties of Purchaser contained in this

Agreement shall be true and correct as of the Closing Date with the same effect as though made at such time and no default by Purchaser under this Agreement shall have occurred and be continuing on the Closing Date;

(iii) Purchaser shall have delivered to Seller all of the deliverables set forth in **Section 4** that are required to be delivered by Purchaser on or before the Closing Date; and

(iv) Purchaser shall have delivered to Seller on the Closing Date the Purchase Price less the Deposit (which Deposit shall be applied to and credited against the Purchase Price by Seller), by wire transfer of immediately available funds pursuant to Seller's wire instructions attached to this Agreement as **Attachment 4**.

3.4 Purchaser shall submit Internal Revenue Service Forms 1098 and 1099 Information Returns for the Loan Package.

4. **Assignment of Notes and Collateral Documents.** Upon receipt of the Purchase Price at Closing, (a) Seller shall execute and deliver the Assignment to Purchaser; (b) Purchaser shall, at Purchaser's sole cost and expense, prepare and submit to Seller, in form and substance satisfactory to Seller, such other assignment(s), including UCC-3 assignment forms, necessary to record or file in the real property and UCC records of each jurisdiction where the collateral included in the Loan Package is located, and Seller shall execute and deliver the same to Purchaser (Purchaser shall be exclusively responsible for filing and recording all documents and for all recording and filing fees, transfer taxes and expenses incident thereto); (c) Seller shall deliver to Purchaser the original Collateral Documents, except as otherwise provided herein, together with the contents of the Loan File. THE DELIVERY OF ANY COLLATERAL DOCUMENT AND/OR THE LOAN FILE SHALL IN NO WAY CONSTITUTE A REPRESENTATION BY SELLER AS TO ITS ACCURACY, COMPLETENESS, ENFORCEABILITY, VALIDITY, PRIORITY, PERFECTION, OR THE LIKE; (d) Seller shall deliver to Purchaser the original Notes evidencing the Loans duly endorsed (by allonge or otherwise) by Seller to Purchaser without recourse, representation or warranty of any kind except as specifically provided in **Section 8** of this Agreement, (e) Seller shall deliver to Purchaser a Certification of Principal Balances in the form of **Attachment 5** to this Agreement with all blanks appropriately completed, (f) promptly after the Closing, Seller shall deliver notices to Debtors and, if and to the extent required under the Collateral Documents, any other lenders, agents or counterparties required under the Collateral Documents, executed by the Seller and informing the recipient of the notice that the Loans have been sold to Purchaser, and containing such other information as required under the Collateral Documents, (g) each of Seller and Purchaser shall execute and deliver to the other the Cross-Collateralization Release Agreement in the form of **Attachment 6** ("**Cross-Collateralization Release Agreement**") to this Agreement and made a part hereof; and (h) promptly after Closing, Seller and Purchaser shall use commercially reasonable efforts to agree-upon, execute and deliver a short-form memorandum of the Cross-

Collateralization Release Agreement for recording in the public records concerning the Property.

5. **Place of Closing.** Closing shall occur on or before the Closing Date at Seller's office located at 1675 North Military Trail, 6<sup>th</sup> Floor, Boca Raton, FL 35486 or at such other location as Seller and Purchaser may agree (including, at Purchaser's election, by escrow).

6. **Remedies of Seller.**

If Seller shall have performed its obligations under this Agreement prior to Closing and Purchaser shall be unable or fails to perform its obligations under this Agreement on the Closing Date, Seller's sole and exclusive remedy at law shall be to terminate this Agreement and to retain the Deposit as liquidated damages, and neither Seller nor Purchaser will have any further rights or obligations under this Agreement except for those provisions of this Agreement which by their express terms survive the termination of this Agreement. PURCHASER AND SELLER ACKNOWLEDGE AND AGREE THAT (a) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO DETERMINE SELLER'S ACTUAL DAMAGES IN THE EVENT OF PURCHASER'S DEFAULT UNDER THIS AGREEMENT, AND (b) TAKING INTO ACCOUNT ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE, THE DEPOSIT IS A REASONABLE ESTIMATE OF SELLER'S ACTUAL DAMAGES IN SUCH EVENT. CONSEQUENTLY, IN THE EVENT OF PURCHASER'S DEFAULT UNDER THIS AGREEMENT ON THE CLOSING DATE, SELLER'S SOLE AND EXCLUSIVE REMEDY AT LAW SHALL BE TO TERMINATE THIS AGREEMENT AND TO RECEIVE AND RETAIN THE DEPOSIT.

7. **Remedies of Purchaser.** Prior to Closing, if Seller breaches this Agreement and Purchaser does not close the transactions contemplated hereunder as a result thereof, then Purchaser shall deliver written notice to Seller specifying the nature of the alleged breach and Seller shall have fifteen (15) days to cure the alleged breach. If the breach is not or cannot be cured by Seller within that fifteen (15) day period, then Purchaser may, at Purchaser's option, elect by written notice to Seller within three (3) days after the expiration of that fifteen (15) day period (a) to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and thereafter, except for those provisions of this Agreement which by their express terms survive the termination of this Agreement, no party hereto shall have any other or further rights or obligations under this Agreement or (b) to the extent that Seller is capable of performing without having to incur costs or expenses, including legal fees, in excess of \$20,000 to perform, bring an action for specific performance of Seller's obligations under this Agreement. In no event shall Seller be or become liable to Purchaser or any other party for damages or any monetary amount or award under this **Section 7.**

8. **Representations, Warranties and Covenants of Seller.** Seller hereby represents and warrants to Purchaser as of the Effective Date and as of the Closing that:

- 8.1 Seller has been duly formed and is validly existing under the laws of its jurisdiction of organization. Seller has all requisite power and authority to execute and deliver and to perform all of its obligations under this Agreement and all instruments and other documents executed and delivered by Seller in connection herewith.
- 8.2 The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require any consent or approval of any other person that has not been obtained or violate any provision of Seller's charter or bylaws.
- 8.3 This Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting enforcement and general equitable principals which may limit the availability of equitable remedies, including without limitation, the remedy of specific performance.
- 8.4 The interests to be assigned by Seller pursuant to this Agreement are not subject to any prior assignment by Seller, in whole or in part.
- 8.5 The information set forth on the Certification of Principal Balances is true and correct concerning the principal balances of the Loans; provided, however, that Seller does not represent or warrant that defenses, counterclaims, rights of set off and other remedies do not exist which could have the effect of reducing the amount collectable with respect to the Loans, whether as a result of the Litigation or otherwise. The Certificate of Principal Balances does not include interest, attorneys' fees or other costs of collection.
- 8.6 Seller has not and will not, after the File Review Date, without the prior written consent of the Purchaser: entered into any written amendments of the Loans or the Collateral Documents identified on **Attachment 3**; or waive in writing any event of default thereunder or any right, power, guaranty, security or other lien or defense or claim included within the Loan Package.
- 8.7 Seller is a "United States person" within the meaning of section 7701(a) (30) of the Internal Revenue Code of 1986, as amended.

9. **Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants to Seller as of the Effective Date and as of the Closing that:

- 9.1 Purchaser has been duly formed and is validly existing under the laws of its jurisdiction of organization. Purchaser has all requisite power and authority to execute and deliver and to perform all of its obligations under this Agreement and

all instruments and other documents executed and delivered by Purchaser in connection herewith.

- 9.2 The execution, delivery and performance of this Agreement and the Confidentiality Agreement by Purchaser have been duly authorized by all necessary action on the part of Purchaser and do not and will not require any consent or approval of any other person that has not been obtained or violate any provision of Purchaser's charter, bylaws, operating agreement or other governance documents.
- 9.3 This Agreement and the Confidentiality Agreement constitute legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting enforcement and general equitable principals which may limit the availability of equitable remedies, including without limitation, the remedy of specific performance.
- 9.4 Purchaser is acquiring the Loan Package for its own account and not for the benefit or account of any other person or entity, or with a view toward making any public sale or distribution thereof, and Purchaser does not intend to sell, offer for sale or syndicate securities or fractional interests in Purchaser in connection with the purchase of the Loan Package.
- 9.5 Purchaser (a) qualifies as an "accredited investor," as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (17 C.F.R. §230.501(e)(1)), and (b) is a person or entity who or which possesses the knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of the prospective acquisition and ownership of the Loans and has such knowledge and experience.
- 9.6 Purchaser acknowledges that the Loan Package will have limited liquidity, and Purchaser represents to Seller that Purchaser has the financial capacity to hold the Loan Package for an indefinite period of time and to bear the economic risk of an outright purchase of the Loan Package.
- 9.7 Purchaser has made such examination, review and investigation of the facts and circumstances necessary to evaluate the Loan Package as it has deemed necessary or appropriate to form a basis for its evaluation of a purchase of the Loan Package, including but not limited to a review of the Loan File and the Litigation. Purchaser is assuming all risk with respect to the completeness, accuracy or sufficiency of the Collateral Documents and the Loan File. Purchaser further acknowledges that in acquiring the Loan Package, Purchaser is assuming the risk of full or partial loss which is inherent with the credit, collateral and collectability risks associated with the Loans and the Litigation.



- 9.8 Purchaser has agreed to the Purchase Price on the basis of its own independent investigation and credit evaluation of the Loan Package and of the Litigation and has not sought or relied upon any representations, information, covenants or agreements of Seller (other than as expressly set forth in **Section 8** of this Agreement and in the Certification of Principal Balances to be delivered at Closing). Purchaser acknowledges that the amount ultimately received by it in respect of the Loan Package may be less than the Purchase Price, and Purchaser shall have no recourse to Seller for any such deficiency.
- 9.9 Purchaser is in full compliance with its obligations under the terms of the Confidentiality Agreement and is not aware of any circumstances which may lead to a breach thereof. Purchaser represents and warrants that all representations and warranties made by Purchaser in the Confidentiality Agreement are true and correct as if made on the Effective Date and at Closing.
- 9.10 Purchaser is a "United States person" within the meaning of section 7701(a) (30) of the Internal Revenue Code of 1986, as amended.
- 9.11 Purchaser acknowledges that it is aware of, and has all of the information that it deems necessary to make an informed decision about, the Litigation, including access to all papers filed in connection with the Litigation, its obligations both under the terms of this Agreement and applicable law generally in connection with the Litigation, and the possible adverse effect or consequences the Litigation may have on the Loans and Collateral Documents. Purchaser is a sophisticated investor, with the knowledge and experience in financial, commercial, and business matters necessary to evaluate, and has the capability of evaluating, the merits, uncertainties and risks of the Litigation, the Loans and Collateral Documents, and Loan File, and is able to bear the economic risks associated therewith. Purchaser has independently and without reliance on Seller, and based on the information that Purchaser has deemed appropriate, undertaken its own due diligence, and made its own analysis of the Loans, Collateral Documents, Loan File and Litigation, in making the decision to enter into this Agreement.
- 9.12 Neither Purchaser nor any of its Affiliates, nor to its knowledge any of their respective brokers or other agents acting in any capacity in connection with the transactions contemplated by this Agreement, is or will be (a) conducting any business or engaging in any transaction or dealing with any person appearing on the U.S. Treasury Department's OFAC list of Prohibited Persons (which lists can be accessed at the following web address: <http://www.ustreas.gov/offices/enforcement/ofac/>), including the making or receiving of any contribution of funds, goods or services to or for the benefit of any such Prohibited Person; (b) engaging in certain dealings with countries and organizations designated under Section 311 of the USA PATRIOT Act as warranting special measures due to money laundering concerns; (c) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 dated September 24,

2001, relating to “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism”; (d) a foreign shell bank or any person that a financial institution would be prohibited from transacting with under the USA PATRIOT Act; or (e) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempting to violate, any of the prohibitions set forth in (i) any U.S. anti-money laundering law, (ii) the Foreign Corrupt Practices Act, (iii) the U.S. mail and wire fraud statutes, (iv) the Travel Act, (v) any similar or successor statutes or (vi) any regulations promulgated under the foregoing statutes.

10. **Limitation of Damages.** Subject to **Sections 6** and **7**, which provide the exclusive remedies for Seller and Purchaser if the Closing does not occur, Purchaser and Seller agree that any damages arising after Closing from the breach of a representation or warranty under **Section 8** or **Section 9** or any other breach of this Agreement shall be limited to the actual damages suffered by the other Party, and shall not include consequential, punitive or similar damages of any kind. Neither Purchaser nor Seller shall have any right or remedy to recover lost profits, loss of business, loss of business opportunity, diminution of value or other consequential, incidental, punitive, exemplary, statutory, special or indirect damages from the other of any kind or nature.

11. **Purchaser's Duties Regarding Litigation.**

- 11.1 The Loans are subject to the pending Litigation. Purchaser shall provide the attorney representing Seller, within ten (10) days after Closing, of the name of the attorney selected by Purchaser to represent Purchaser's interests in the Litigation. Purchaser shall within twenty (20) days after Closing notify the clerk of the court, all counsel of record and all arbitrators and mediators, as applicable, that ownership of the Loans were transferred from Seller to Purchaser. Purchaser shall have its attorney file appropriate pleadings or other papers with the court within thirty (30) days after the Closing substituting Purchaser's attorney for Seller's attorney and also removing Seller as a party to the Litigation and any other litigation and substituting Purchaser as the real party in interest. Seller will cooperate in all reasonable ways with Purchaser's efforts to substitute counsel, including by signing any appropriate documents, provided that, in each case, such efforts and documents shall be prepared by, and at the sole cost and expense of, the Purchaser, and provided further that following the requests of Purchaser will not (in Seller's reasonable determination) expose Seller to any obligation, liability or expense that in Seller's reasonable judgment is material and for which Seller has not been provided adequate indemnity by Purchaser. Seller will notify its attorney to cease participating in the Litigation and any other litigation upon the first to occur of (a) the filing of the pleading substituting Purchaser's attorney for Seller's attorney, or (b) thirty (30) days after Closing. Seller may proceed unilaterally to have such matter dismissed, either with or without prejudice, in the event such substitution is not effected as prescribed by this **Section 11.1**.

- 11.2 Purchaser shall not litigate or prosecute any claim in the name of Seller, and Purchaser shall not intentionally or unintentionally, through misdisclosure or nondisclosure, mislead or conceal its identity or its ownership of the Loans or the Loan Package.
- 11.3 Seller in its sole discretion may terminate this Agreement by notice to Purchaser in writing if, following the Effective Date but prior to Closing, any Loan becomes the subject of any other litigation (other than the Litigation) between any Debtor and Seller. In the event of such termination, the Deposit shall be returned to Purchaser, the Evaluation Material (as defined in the Confidentiality Agreement) shall be returned to Seller, and this Agreement shall be of no further force or effect. Nothing contained in this Agreement or otherwise shall obligate Seller to repurchase any Loan because of the Litigation or the consequences of the Litigation or in the event that any other litigation is commenced with respect to any Loan after the Closing, or for any other reason.
12. **Purchaser's Duties Regarding Insured Collateral.** As of the Closing, Purchaser is exclusively responsible for obtaining its own hazard insurance or other insurance concerning the Property. Seller has force-placed insurance coverage concerning the Property and intends to cancel the coverage and all such hazard and other insurance promptly upon Closing. Any suffered loss after Closing due to Seller's cancellation of such insurance as of the date of Closing or otherwise is the sole responsibility of Purchaser.
13. **Notice of Claim.** Purchaser shall immediately notify Seller of any claim, threatened claim, or any litigation against Seller regarding the Loan Package or any Loan which may come to its attention, including, without limitation, any claim or threatened claim in the Litigation.
14. **Access and Retention of Files and Records.** Purchaser shall provide Seller with full and unrestricted access to all Collateral Documents and the Loan File during normal business hours at any time or times after the Closing. The Loan File and Collateral Documents are acknowledged to be "Commercial Bank Records" of Seller. Purchaser shall comply with the rules and regulations of the Comptroller of the Currency and FDIC regarding the length of time Comerica Bank Records are to be maintained, and to otherwise comply with other applicable state and federal laws, rules and regulations in that regard.
15. **Notices.** All notices or deliveries required or permitted hereunder shall be in writing and may be given either by personal delivery, by facsimile transmission, electronic image scan transmission (such as a "pdf" file) or by depositing same enclosed in a sealed wrapper in the United States Mail, with sufficient postage prepaid and sent by registered or certified mail, return receipt requested, addressed to the party set forth below, or such other address or facsimile number as either party may hereafter designate by notice to the other party. Notice given by personal delivery in accordance herewith shall be effective upon delivery at the address of the addressee. Notice given by registered or certified mail

in accordance herewith shall be effective on the date of the first attempted delivery of the registered or certified item. Notice by facsimile transmission shall be deemed given upon delivery and verification of communication between transmitting facilities.

**PURCHASER:**

With a copy to:

With a copy to:

**SELLER:**

COMERICA BANK  
1675 Military Trail, Sixth Floor  
Boca Raton, Florida 33486  
Attention: Alan S. Blankstein, Vice President  
Fax Number: (561) 961-6660  
Email: asblankstein@comerica.com

With a copy to:

Miller, Canfield, Paddock and Stone, P.L.C.  
150 W. Jefferson, Suite 2500  
Detroit, Michigan 48226  
Attention: Jonathan S. Green Esq.  
Fax Number: (313) 496-7500  
Email: green@mcps.com

16. **Use of Seller's Name.** Purchaser shall not use or permit the use by its agents, successors or assigns of any name which is similar to the name of Seller. Purchaser will not represent or imply that it is affiliated with, authorized by, or in any way related to, Seller. Purchaser and Seller agree and stipulate that any breach of the provisions of this Section will result in actual and substantial damages to Seller in an amount that cannot be determined with precision. It is therefore agreed that, in the event of such breach, Purchaser shall pay the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) to the Seller for each such breach, as liquidated damages, together with such fees and expenses as Seller may incur in preventing further breaches or the continuation of a breach or in recovering liquidated damages.

17. **Release of Seller.** If Purchaser shall compromise, settle, or release any indebtedness or obligation which results in less than a full payoff of the Loans, Purchaser shall cause all Debtors to simultaneously release and discharge Seller and each of Seller's Affiliates and all of their respective officers, directors, employees, agents, attorneys, representatives and assigns (each, a "**Released Party**" and, collectively, "**Released Parties**") from all claims, demands and causes of action which any such Debtor may have against any such Released Party arising from or growing out of any act or omission occurring prior to the date of such release concerning the Loans. If Purchaser fails to obtain such a release of the Released Parties, Purchaser shall protect, save, indemnify, and hold Seller and the other Released Parties harmless from any expense, damage or liability of each and every nature whatsoever suffered or incurred by Seller or any Released Party that could have been prevented had Purchaser obtained the release. The indemnification obligation in this **Section 17** is in addition to, and not in lieu of, the indemnification obligation described in **Section 26**. The indemnification obligation described in **Section 26** shall remain in full force and effect in all events. Purchaser acknowledges that Seller and the other Released Parties are intended beneficiaries of this **Section 17**.
18. **Severability.** Each part of this Agreement is intended to be several. If any term, covenant, condition or provision hereof is unlawful, invalid, or unenforceable for any reason whatsoever, such illegality, invalidity, or unenforceability shall not affect the legality, validity or enforceability of the remaining parts of this Agreement, and all such remaining parts hereof shall be valid and enforceable and have full force and effect as if the invalid or unenforceable part had not been included.
19. **Construction.** Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural and vice versa, and impersonal pronouns shall be deemed to include the personal pronoun of the appropriate gender. All Attachments hereto are incorporated herein by reference for all purposes.
20. **Assignment.** This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof, including the Attachments hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns; provided, however, it is understood and agreed that Purchaser shall not assign, transfer or otherwise dispose of this Agreement or any rights, benefits or interests hereunder without first obtaining the prior written consent of Seller and any such attempted assignment, transfer or other disposition shall be null and void.
21. **Survival.** Each and every covenant, term, representation, warranty and agreement made by Purchaser or Seller under this Agreement and/or the Confidentiality Agreement shall survive the Closing and shall not merge into the closing documents but, instead, shall be independently enforceable.
22. **Choice of Law.** TO THE EXTENT NOT CONTROLLED BY FEDERAL LAW, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF FLORIDA.

THIS AGREEMENT IS PERFORMABLE IN BROWARD COUNTY, FLORIDA, AND ALL DISPUTES AND MATTERS WHATSOEVER ARISING HEREUNDER IN CONNECTION WITH OR INCIDENT TO THIS AGREEMENT SHALL BE LITIGATED, IF AT ALL, IN AND BEFORE A COURT LOCATED IN BROWARD COUNTY, FLORIDA, TO THE EXCLUSION OF THE COURTS OF ANY OTHER STATE OR COUNTRY.

23. **Loan Sale Without Recourse and No Warranties or Representations by Seller.** THE SALE OF THE LOAN PACKAGE SHALL BE WITHOUT RECOURSE, REPRESENTATION OR WARRANTY OTHER THAN AS SPECIFICALLY PROVIDED IN **SECTION 8** OF THIS AGREEMENT (AS SUCH REPRESENTATION OR WARRANTY MAY BE UPDATED IN ACCORDANCE WITH **SECTION 3.3(a)(i)** HEREIN) AND IN THE CERTIFICATION OF PRINCIPAL BALANCES DELIVERED AT CLOSING, AND PURCHASER ACKNOWLEDGES AND AGREES THAT EXCEPT AS PROVIDED IN **SECTION 8** OF THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS, AND PURCHASER IS NOT RELYING ON SELLER WITH RESPECT TO, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (a) THE MARKETABILITY, VALUE, QUALITY OR CONDITION OF THE LOAN PACKAGE; (b) THE VALIDITY, ENFORCEABILITY, OR COLLECTABILITY OF THE NOTES OR LOAN AGREEMENTS EVIDENCING THE LOANS OR ANY OF THE COLLATERAL DOCUMENTS; (c) THE VALIDITY, PRIORITY, OR PERFECTION OF THE SECURITY INTERESTS OR OTHER LIENS CREATED BY THE COLLATERAL DOCUMENTS; (d) THE STATE OF TITLE TO THE LOANS OR ANY COLLATERAL FOR ANY LOAN; (e) THE PRIORITY OF SECURITY INTERESTS OR OTHER LIENS PURPORTING TO SECURE ANY LOAN; (f) THE ZONING, TAX CONSEQUENCES, PHYSICAL CONDITION, UTILITY CAPACITY OR COMMITMENT FOR UTILITY CAPACITY, OPERATING HISTORY OR PROJECTIONS, VALUATIONS, GOVERNMENTAL APPROVALS OR GOVERNMENTAL REGULATIONS WHICH MAY BE APPLICABLE, COMPLIANCE WITH SPECIFICATIONS, LOCATION, EXISTENCE OF, OR COMPLIANCE WITH APPLICABLE LAWS, RULES, REGULATIONS, RESTRICTIVE COVENANTS OR OTHER ENCUMBRANCES OF, TO OR BY THE PROPERTIES SECURING (OR PURPORTING TO SECURE) ANY LOAN; (g) COMPLIANCE BY ANY DEBTOR OR ANY PROPERTY SECURING (OR PURPORTING TO SECURE) ANY LOAN WITH ANY FRANCHISE, MANAGEMENT OR OPERATING AGREEMENT, ANY LIQUOR, USE OR OCCUPANCY PERMIT; (h) THE ADEQUACY OF DESIGN, SUITABILITY, QUALITY, DESCRIPTION, DURABILITY, OR QUALITY OF MATERIAL OR WORKMANSHIP OF THE PROPERTIES WHICH ARE COLLATERAL FOR ANY OF THE LOANS, (i) THE COMPLIANCE BY SELLER WITH ANY AND ALL APPLICABLE FEDERAL, STATE OR LOCAL LAWS OR ANY RULES, REGULATIONS, OR ORDINANCES PROMULGATED PURSUANT THERETO,

PERTAINING TO OR IN ANY MANNER RELATED TO ANY OF THE LOANS OR THE PROPERTIES WHICH ARE COLLATERAL FOR ANY OF THE LOANS OR ANY STRUCTURES AND IMPROVEMENTS LOCATED THEREON; (j) THE COMPLIANCE OF ANY LOAN WITH ANY STATE OR FEDERAL USURY LAWS OR REGULATIONS; (k) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION, DATA, STATEMENTS, AMOUNTS OR SOURCES OF INFORMATION CONTAINED IN THE LOAN FILE, COLLATERAL DOCUMENTS, OR LOAN PACKAGE; (l) THE LITIGATION OR THE CONSEQUENCES OF THE LITIGATION; OR (m) ANY OTHER MATTERS PERTAINING TO THE LOAN PACKAGE OR THE PROPERTIES WHICH ARE COLLATERAL (OR PURPORT TO BE COLLATERAL) FOR ANY OF THE LOANS. IN ADDITION, SELLER EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, SELLER DOES NOT MAKE AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER OR ABOUT THE PROPERTIES SECURING THE LOANS OR THE COMPLIANCE OR NONCOMPLIANCE OF SUCH PROPERTIES WITH THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, THE SUPERFUND AMENDMENT AND REAUTHORIZATION ACT, THE RESOURCE CONSERVATION RECOVERY ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL ENVIRONMENTAL PESTICIDES ACT, THE CLEAN WATER ACT, THE CLEAN AIR ACT, ANY SO CALLED FEDERAL, STATE OR LOCAL "SUPERFUND" OR "SUPERLIEN" STATUTE, OR ANY OTHER STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER OR DECREE REGULATING, RELATING TO OR IMPOSING LIABILITY (INCLUDING STRICT LIABILITY) OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS SUBSTANCES OR THE HEALTH OR SAFETY OF ANY PERSON OR PROPERTY OR THE ENVIRONMENT (collectively, "**Hazardous Substance Laws**"). For purposes of this Agreement, the term "**Hazardous Substances**" shall mean and include those elements or compounds which are contained on the list of hazardous substances adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance Laws. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT PURCHASER HAS BEEN GIVEN THE OPPORTUNITY TO INSPECT THE LOANS, AND THEREFORE, EXCEPT FOR THE REPRESENTATIONS SET FORTH IN **SECTION 8** OF THIS AGREEMENT, PURCHASER WILL BE PURCHASING THE LOAN PACKAGE PURSUANT TO ITS INDEPENDENT EXAMINATION, STUDY, INSPECTION AND KNOWLEDGE OF THE LOAN PACKAGE. PURCHASER IS RELYING UPON ITS OWN DETERMINATION OF THE QUALITY, VALUE AND CONDITION OF THE LOANS AND THE PROPERTY SECURING PAYMENT OF THE LOANS, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE LOAN PACKAGE WAS OR WILL BE OBTAINED FROM A VARIETY OF

SOURCES AND THAT SELLER HAS NOT MADE AND WILL NOT BE OBLIGATED TO MAKE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION, AND SELLER MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. FINALLY, PURCHASER UNDERSTANDS THAT THE EXCLUDED DOCUMENTS COULD CONTAIN INFORMATION WHICH, IF KNOWN TO PURCHASER, COULD HAVE A MATERIAL IMPACT ON ITS DETERMINATION OF VALUE OF THE LOAN PACKAGE. The Closing shall constitute an acknowledgment by Purchaser that the Loan Package was accepted without representation or warranty, express or implied and otherwise in an "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition based solely on Purchaser's own inspection except as provided in **Section 8** of this Agreement (as such representations or warranties may be updated in accordance with **Section 3.3(a)(i)** herein) and in the Certification of Principal Balances delivered at Closing. No event or condition shall entitle Purchaser to have the Loans repurchased by Seller.

24. **Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF SELLER AND PURCHASER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN RESPECT OF ANY CONTROVERSY CONCERNING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
25. **No Oral Agreements.** THIS DOCUMENT AND ALL OTHER DOCUMENTS RELATING TO THIS LOAN SALE CONSTITUTE A WRITTEN LOAN SALE AGREEMENT WHICH REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.
26. **Purchaser's Compliance With Laws and Indemnification.** Purchaser promises, covenants and agrees that it will comply in all respects with any applicable federal and/or state laws governing or otherwise pertaining in any manner to the collection or enforcement of the Loans including, but not limited to, compliance with the following: the Federal Fair Debt Collection Practices Act (15 U.S.C.A. §1691 et seq. as amended) and any state statute equivalent thereto and the Fair Credit Reporting Act (15 U.S.C.A. §1681 et seq. as amended), and compliance with all applicable state or federal usury laws and regulations promulgated pursuant thereto. Purchaser hereby indemnifies, defends (through attorneys acceptable to Seller), and holds Seller and all parent companies, subsidiaries and affiliates of Seller and all officers, directors, employees, agents, attorneys and other representatives of Seller and such other entities (all being hereinafter collectively called the "**Indemnified Parties**") harmless from and against any and all claims, demands, losses, damages, penalties, fines, forfeitures, judgments, attorney's fees and other costs, fees and expenses suffered or incurred by Seller or any of the Indemnified Parties which directly or indirectly relate to or arise out of (a) the occurrence of any breach by Purchaser of the foregoing covenants, (b) any acts or omissions by the Purchaser which result in any claim, demand or assertion that the Seller was, subsequent to the Closing, in any way involved in, or had in any way authorized, approved or



consented to any unlawful acts or collection practices in connection with the Loans subsequent to the Closing; or (c) any acts or omissions by the Purchaser arising or occurring on or after the Closing Date in connection with, or related to, the Litigation. In addition to the foregoing indemnification provisions, Seller shall be entitled to pursue any and all rights and remedies available to Seller under this Agreement. All of the covenants, obligations, terms, remedies and indemnities contained in this **Section 26** shall expressly survive the closing of the transactions contemplated by this Agreement and shall not be merged into any of the closing documents but shall be independently enforceable.

27. **Time of Essence.** Time is of the essence of each and every term of this Agreement.

[signatures on next page]

Subject to Confidentiality Agreement

**SIGNATURE PAGE TO LOAN SALE AGREEMENT**

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

**PURCHASER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

**SELLER:**

COMERICA BANK

By: \_\_\_\_\_  
Name: Alan S. Blankstein  
Title: Vice President

Subject to Confidentiality Agreement

**ATTACHMENT 1**

**SCHEDULE OF LOANS**

<b><u>Loan No.</u></b>	<b>Principal Balance as of</b>
Ocean 4660 Installment Loan 9895165099/59	\$10,651,445.32
Ocean 4660 Draw-to-loan 9895165099/42	\$933,449.13

The above-referenced Loans are evidenced by the Notes, as applicable, and secured by the Collateral Documents more particularly described as follows:

Installment Note dated January 3, 2008, in the original stated principal amount of \$10,850,000, as amended by the Amendment to Note dated July 10, 2008

Draw-To-Note dated January 3, 2008, in the original Stated principal amount of \$1,000,000, as amended by the Amendment to Note dated July 10, 2008

Guaranty dated as of January 3, 2008, signed by Hanna Karcho-Polselli

Guaranty dated as of January 3, 2008, signed by Remo Polselli

Continuing Collateral Mortgage dated January 3, 2008, covering property commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida

Security Agreement (All Assets) dated as of January 3, 2008, signed by Ocean 4660, LLC

UCC-1 financing statement, file number 20080735983X, filed on January 4, 2008 with the Florida Secretary of State

Forbearance Agreement dated June 9, 2010

Forbearance Agreement dated September 3, 2010

Forbearance Agreement dated May 5, 2011

Delinquency Notice dated October 26, 2011

ISDA Master Agreement, confirmed by Confirmation Letter dated January 25, 2008

**Subject to Confidentiality Agreement**

## ATTACHMENT 2-A

### ASSIGNMENT OF LOAN DOCUMENTS, LIENS AND SECURITY INSTRUMENTS

#### RECITALS

A. **COMERICA BANK, a Texas banking association ("ASSIGNOR")**, whose address is 1675 Military Trail, Sixth Floor, Boca Roton, Florida 33486, Attention: Alan S. Blankstein, desires to assign the Notes (hereinafter defined) together with all right, title and interest it has in the Assigned Documents (hereinafter defined) to \_\_\_\_\_, a \_\_\_\_\_ ("**ASSIGNEE**") whose address is \_\_\_\_\_.

B. The term "**Assigned Documents**", as used herein, shall mean the documents being more particularly described on **Exhibit "A"** attached hereto and made a part hereof for all purposes, together with ASSIGNOR's right, title and interest in, to and under any and all documents described on **Exhibit "B"** attached hereto and made a part hereof for all purposes. The term Assigned Documents shall also include ASSIGNOR's right, title and interest in all mortgagee's policies of title insurance executed or delivered to ASSIGNOR, or which ASSIGNOR has the right to have delivered to it, in connection with or pertaining to any or all of the Assigned Documents.

#### ASSIGNMENT

**ASSIGNOR**, for good and valuable consideration received from **ASSIGNEE**, the receipt and sufficiency of which are hereby acknowledged, has, subject as hereinafter provided, **TRANSFERRED, ASSIGNED, GRANTED and CONVEYED** and by these presents does **TRANSFER, ASSIGN, GRANT and CONVEY** unto **ASSIGNEE**, its successors and assigns, the Notes, all obligations evidenced by the Notes, and all of **ASSIGNOR's** rights, title and interest in and to the Assigned Documents and all rights, powers, guaranties, security interests and other liens arising under any Assigned Document.

**THE ASSIGNMENT MADE HEREBY IS WITHOUT RECOURSE, REPRESENTATION OR WARRANTY (EXCEPT TO THE EXTENT STATED IN SECTION 8 OF THAT CERTAIN LOAN SALE AGREEMENT (THE "AGREEMENT") DATED AS OF \_\_\_\_\_, 2013, BETWEEN ASSIGNOR AND ASSIGNEE AND IN THAT CERTAIN CERTIFICATION OF PRINCIPAL BALANCES DELIVERED PURSUANT THERETO) AND IS SUBJECT TO THE TERMS AND CONDITIONS OF SUCH AGREEMENT. SAID AGREEMENT IS INCORPORATED HEREIN BY REFERENCE FOR ALL PURPOSES.**

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**ASSIGNOR:**

COMERICA BANK

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

Name: Alan S. Blankstein

Title: Vice President

**ACCEPTED BY ASSIGNEE:**

\_\_\_\_\_

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

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

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

STATE OF FLORIDA        '

COUNTY OF                '

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013,  
by Alan S. Blankstein, a Vice President of Comerica Bank, a Texas banking association, on  
behalf of said association.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the State of Florida

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires:

\_\_\_\_\_

STATE OF

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ on behalf of said company.

(SEAL)

Notary Public

My Commission Expires: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Subject to Confidentiality Agreement**

## EXHIBIT A

Installment Note dated January 3, 2008, in the original stated principal amount of \$10,850,000, as amended by the Amendment to Note dated July 10, 2008

Draw-To-Note dated January 3, 2008, in the original stated principal amount of \$1,000,000, as amended by the Amendment to Note dated July 10, 2008

Guaranty dated as of January 3, 2008, signed by Hanna Karcho-Polselli

Guaranty dated as of January 3, 2008, signed by Remo Polselli

Continuing Collateral Mortgage dated January 3, 2008, covering property commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida

Security Agreement (All Assets) dated as of January 3, 2008, signed by Ocean 4660, LLC

UCC-1 financing statement, file number 20080735983X, filed on January 4, 2008 with the Florida Secretary of State

Forbearance Agreement dated June 9, 2010

Forbearance Agreement dated September 3, 2010

Forbearance Agreement dated May 5, 2011

Delinquency Notice dated October 26, 2011

ISDA Master Agreement, confirmed by Confirmation Letter dated January 25, 2008

Title Insurance Policy



## **EXHIBIT B**

UCC-1 financing statement, file number 20080735983X, filed on January 4, 2008 with the Florida Secretary of State

Forbearance Agreement dated June 9, 2010

Forbearance Agreement dated September 3, 2010

Forbearance Agreement dated May 5, 2011

Delinquency Notice dated October 26, 2011

ISDA Master Agreement, confirmed by Confirmation Letter dated January 25, 2008

Subject to Confidentiality Agreement

**ATTACHMENT 2-B**

**ALLONGE  
(Installment Note)**

**FOR VALUE RECEIVED**, the undersigned, the current payee under that certain Installment Note dated January 3, 2008, as amended by that certain Amendment to Note dated July 10, 2008, in the original principal amount of Ten Million Eight Hundred and Fifty Thousand Dollars (\$10,850,000), made by OCEAN 4660 LLC, to which note this Allonge is affixed (the “**Note**”), hereby assigns, transfers, endorses, negotiates and sets the Note over to, and makes the Note payable to the order of \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”), without recourse, representation or warranty, either express or implied (except as set forth in Section 8 of that certain Loan Sale Agreement between the undersigned and Assignee dated \_\_\_\_\_ 2013).

Dated as of \_\_\_\_\_, 2013.

COMERICA BANK

By: \_\_\_\_\_  
Name: Alan S. Blankstein  
Title: Vice President

**ATTACHMENT 2-C**

**ALLONGE**  
**(Draw-To-Note)**

**FOR VALUE RECEIVED**, the undersigned, the current payee under that certain Draw-To-Note dated January 3, 2008, as amended by that certain Amendment to Note dated July 10, 2008, in the original principal amount of One Million Dollars (\$1,000,000), made by OCEAN 4660 LLC, to which note this Allonge is affixed (the “**Note**”), hereby assigns, transfers, endorses, negotiates and sets the Note over to, and makes the Note payable to the order of, \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”), without recourse, representation or warranty, either express or implied (except as set forth in Section 8 of that certain Loan Sale Agreement between the undersigned and Assignee dated \_\_\_\_\_, 2013.

Dated as of \_\_\_\_\_, 2013.

COMERICA BANK

By: \_\_\_\_\_  
Name: Alan S. Blankstein  
Title: Vice President

**ATTACHMENT 2-D**

**ASSIGNMENT OF MORTGAGE**

*[Note: This Form of Assignment of Mortgage is subject to change to the extent necessary to meet any recording or other statutory requirements of the local jurisdiction where the Property is located.]*

PREPARED BY AND UPON RECORDATION RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ASSIGNMENT OF CONTINUING COLLATERAL MORTGAGE**

KNOW THAT

**COMERICA BANK, a Texas banking association (“Assignor”),**

For valuable consideration given by: \_\_\_\_\_, a \_\_\_\_\_, having an address of \_\_\_\_\_, (“Assignee”), the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby grant, bargain, sell, convey, assign, transfer, and set over, without recourse, representation or warranty, except as set forth in that certain related Loan Sale Agreement dated \_\_\_\_\_, 2013, all of Assignor’s right, title and interest, of any kind whatsoever, including that of mortgagee, beneficiary, payee, assignee or secured party (as the case may be), in and to the following:

1. Continuing Collateral Mortgage dated January 3, 2008 (as same may have been amended) by OCEAN 4660 LLC, to Assignor, and recorded \_\_\_\_\_, as Instrument Number \_\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, in the Real Estate Records pertaining to land situated in the State of Florida, County of Broward, and commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida (as amended, the “**Mortgage**”); and
2. The Installment Note dated January 3, 2008, in the original stated principal amount of \$10,850,000, as amended by the Amendment to Note dated July 10, 2008, and the Draw-To-Note dated January 3, 2008, in the original stated principal amount of \$1,000,000, as amended by the Amendment to Note dated July 10, 2008, each as secured by the Mortgage, and all other related Collateral Documents that secure the indebtedness and/or obligations secured by the Mortgage;

covering the property described on EXHIBIT A attached hereto and made a part hereof;

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns of the Assignee forever.

*(The remainder of this page has been intentionally left blank)*

**Subject to Confidentiality Agreement**



**EXHIBIT A**

Legal Description

[to be inserted]

**Subject to Confidentiality Agreement**

EXHIBIT "A"

Legal Description

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL A:

Lots 11, 12, 13, 14, 15, 16, 17, 18 and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida; ALSO all of that parcel of land, if any, bounded on the West by the Easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the North line of Lot 17 of said Block 9, extended Easterly to the Atlantic Ocean and bounded on the South by the South line of Lot 14 of said Block 9, extended Easterly to the Atlantic Ocean, said land fronting the Atlantic Ocean.

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL B:

Lots 20 and 21, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

PARCEL C:

Lots 9, 10, 22, 23 and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

Tax Identification Nos.: 19318-01-06100 and 19318-01-07000 (Parcel A)  
19318-01-07300 (Parcel B)  
19318-01-06800 and 19318-01-06820 (Parcel C)

Commonly Known As: 4660 N. Ocean Drive, Lauderdale by the Sea, Florida



**ATTACHMENT 3**

**LIST OF COLLATERAL DOCUMENTS**

Guaranty dated as of January 3, 2008, signed by Hanna Karcho-Polselli

Guaranty dated as of January 3, 2008, signed by Remo Polselli

Continuing Collateral Mortgage dated January 3, 2008, covering property commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida

Security Agreement (All Assets) dated as of January 3, 2008, signed by Ocean 4660, LLC

UCC-1 financing statement, file number 20080735983X, filed on January 4, 2008 with the Florida Secretary of State

Forbearance Agreement dated June 9, 2010

Forbearance Agreement dated September 3, 2010

Forbearance Agreement dated May 5, 2011

Subject to Confidentiality Agreement

**ATTACHMENT 4**

**WIRING INSTRUCTIONS**

Comerica Bank

ABA# 072-000-096

Act# CLS 2158590010

Credit CLS

Reference Ocean 4660 LLC, Account # 9895165099

Attn: Debra Tinsley, 313-222-4784

Notify: Alan Blankstein, 561-961-6689

Subject to Confidentiality Agreement

**ATTACHMENT 5**

**CERTIFICATION OF PRINCIPAL BALANCES**

This certificate is given pursuant to **Section 4** of that certain Loan Sale Agreement (the "**Agreement**") dated as \_\_\_\_\_, 2013 between Comerica Bank, a Texas banking association (the "**Seller**"), and \_\_\_\_\_, a \_\_\_\_\_ (the "**Purchaser**"). Capitalized terms, not otherwise defined herein, shall have the meanings assigned to such terms in the Agreement. Accordingly, the Seller hereby certifies to the Purchaser that the principal balance of the Loans is not less than the amounts specified. **NOTWITHSTANDING THE FOREGOING, THE SELLER DOES NOT REPRESENT OR WARRANT THAT DEFENSES, COUNTERCLAIMS, RIGHTS OF SET OFF AND OTHER REMEDIES DO NOT EXIST WHICH COULD HAVE THE EFFECT OF REDUCING THE AMOUNT COLLECTIBLE WITH RESPECT TO ANY LOAN, WHETHER AS A RESULT OF THE LITIGATION OR OTHERWISE.**

<b><u>Loan No.</u></b>	<b>Principal Loan Balance as of _____ 20, 2013</b>
989516509 9/59	\$10,651,445.32
989516509 9/42	\$933,449.13

**ATTACHMENT 6**  
**CROSS-COLLATERALIZATION RELEASE AGREEMENT**

[To be attached]

20,805,219.4\018095-00524

**Subject to Confidentiality Agreement**

## CROSS-COLLATERALIZATION RELEASE AGREEMENT

This **CROSS-COLLATERALIZATION RELEASE AGREEMENT** (this "**Agreement**") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013 (the "**Effective Date**"), by and between **COMERICA BANK**, a Texas banking association ("**Comerica**"), and \_\_\_\_\_, a \_\_\_\_\_ (the "**Purchaser**") (each, a "**Party**" and collectively, the "**Parties**").

**WHEREAS**, on or about January 3, 2008, Comerica made a loan to Ocean 4660, LLC, a Florida limited liability company ("**Ocean Borrower**"), in the aggregate original principal amount of \$11,850,000 (the "**Ocean Loan**");

**WHEREAS**, the Ocean Loan is secured, *inter alia*, by that certain Continuing Collateral Mortgage dated January 3, 2008, recorded in Official Records Book 44971, at Page 797, of the Public Records of Broward County, Florida (as modified, the "**Ocean Mortgage**"), which Ocean Mortgage encumbers certain property more particularly described therein and commonly known as Lauderdale Beachside Hotel located at 4660 North Ocean Drive, Lauderdale-By-The-Sea, Florida (the "**Ocean Property**");

**WHEREAS**, on or about December 6, 2006, Comerica made loans to H.K. Hotel Management, LLC, a Michigan limited liability company, and Hanna Karcho-Poselli, a married woman (collectively, the "**Tropic Borrowers**"), in the aggregate original principal amount of \$4,185,000 (the "**Tropic Loans**");

**WHEREAS**, the Tropic Loans are secured, *inter alia*, by that certain Continuing Collateral Mortgage dated December \_\_, 2006, recorded in Official Records Book 43229, at Page 1947, of the Public Records of Broward County, Florida (as modified, the "**Tropic Mortgage**"), which Tropic Mortgage encumbers certain property more particularly described therein and commonly known as 4560 El Mar Drive, Lauderdale-By-The-Sea, Florida (the "**Tropic Property**");

**WHEREAS**, pursuant to that certain Spreader Agreement, Cross-Default and Cross-Collateralization Agreement dated as of May 9, 2011, recorded in Official Records Book 47993, at Page 485, of the Public Records of Broward County, Florida, entered into by and between Comerica and Ocean Borrower, Tropic Borrowers, and Tropic Ranch, Inc., a Florida corporation (as amended, restated, or modified, the "**Cross-Collateralization Agreement**"), (w) the Ocean Property also serves as collateral for other Tropic Loans; (x) the Tropic Property also serves as collateral for the Ocean Loans; (y) Comerica, in its capacity as lender under the Tropic Loans, has the right pursuant to the Cross-Collateralization Agreement during the continuance of an event of default of the Tropic Loans to enforce its remedies against Ocean Property; and (z) Comerica, in its capacity as lender under the Ocean Loans, has the right pursuant to the Cross-Collateralization Agreement during the continuance of an event of default of the Ocean Loans to enforce its remedies against the Tropic Property;

**WHEREAS**, pursuant to that certain Loan Sale Agreement dated as of \_\_\_\_\_, 2013 (the "**Loan Sale Agreement**"), entered into by and between Comerica

and Purchaser, Comerica has agreed to sell, and Purchaser has agreed to purchase, the Ocean Loan only; and

**WHEREAS**, pursuant to the Loan Sale Agreement, the Parties agreed that from and after the Effective Date (x) Comerica would release and refrain from exercising any right or remedy against the Ocean Property that Comerica may otherwise be entitled to pursuant to the Cross-Collateralization Agreement and/or any other document evidencing the Tropic Loans, and (y) Purchaser would release and refrain from exercising any right or remedy against the Tropic Property that Purchaser may otherwise be entitled to pursuant to the Cross-Collateralization Agreement, the Collateral Documents (as defined in the Loan Sale Agreement), and/or any other document evidencing the Ocean Loan.

**NOW, THEREFORE**, in consideration of the promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Defined Terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Cross-Collateralization Agreement and, if not defined in the Cross-Collateralization Agreement, in the Loan Sale Agreement.

2. Comerica Release. Comerica, on behalf of itself and any of its successors and assigns which may from time to time become a "Lender" under the Cross-Collateralization Agreement, does hereby release and forever discharge and covenant and agree not to sue or otherwise seek to enforce any remedy against the Ocean Borrower or the Ocean Property (or any portion thereof) on account of any and all liabilities, duties, responsibilities, obligations, claims, demands, actions, causes of action, cases, controversies, damages, costs, losses, and expenses of any nature whatsoever, whether in law or in equity, whether known or unknown, and any and all rights, duties, liabilities and obligations, whether now existing or hereafter arising out of or in any way relating to or connected with, directly or indirectly, the Tropic Property or the Tropic Loans. For the avoidance of doubt, Comerica reserves and does not release or forever discharge or covenant and agree not to sue or otherwise seek to enforce any remedy, under this paragraph 2 or otherwise, against (a) HKHM, HKP, TRI, or any guarantor or other person or entity in connection with the Tropic Loans; (b) Purchaser, the Ocean Borrower and/or the Ocean Property in connection with any breach by Purchaser of, or under, the Loan Sale Agreement or this Agreement; and/or (c) the Ocean Borrower in connection with any defense of Comerica (but not the right to seek an affirmative recovery) in the Litigation.

3. Purchaser Release. Purchaser, on behalf of itself and any of its successors and assigns which may from time to time become a "Lender" under the Cross-Collateralization Agreement, does hereby release and forever discharge and covenant and agree not to sue or otherwise seek to enforce any remedy against the Tropic Borrowers, TRI or the Tropic Property (or any portion thereof) on account of any and all liabilities, duties, responsibilities, obligations, claims, demands, actions, causes of action, cases, controversies, damages, costs, losses, and expenses of any nature whatsoever, whether in law or in equity, whether known or unknown, and any and all rights, duties, liabilities and obligations, whether now existing or hereafter arising out of or in any way relating to or connected with, directly or indirectly, the Ocean Loans, the Ocean Property, and/or the Collateral Documents.

4. Representations and Warranties. Comerica hereby represents and warrants, as of the date hereof, as follows:

(a) The Cross-Collateralization Agreement is in full force and effect.

(b) Except as described in this Agreement, Comerica has not assigned, and has not entered into any written agreement to modify or amend in any way, the Cross-Collateralization Agreement.

(c) A true, correct and complete copy of the Cross-Collateralization Agreement is attached hereto as Exhibit A.

5. Entire Agreement. Each of the Parties acknowledges and agrees that no promises or representations were made to such Party by the other Party which do not appear in this Agreement and the Loan Sale Agreement and that this Agreement and the Loan Sale Agreement contain the entire agreement of the Parties on the subject matter thereof.

6. Construction. The Parties agree that this Agreement shall be construed without regard to the drafter of the same and shall be construed as though each Party to this Agreement participated equally in the preparation and drafting of this Agreement.

7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida, without regard to its conflict of laws principles. Any action or proceeding against the Parties relating in any way to this Agreement may only be brought and enforced in the federal and state courts located in Broward County, Florida and the Parties irrevocably submit to the exclusive jurisdiction of such courts in respect of any such action or proceeding.

8. Jury Trial Waiver. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN RESPECT OF ANY CONTROVERSY CONCERNING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

9. Breach of Agreement. Each Party agrees to indemnify, defend, and hold harmless the other Party (the "**Non-Breaching Party**") and its agents, successors and assigns against any liability, loss, cost and expense, including reasonable attorneys' fees, that arise from any breach of this Agreement by such Party. In addition to the foregoing, each of the Parties acknowledges and agrees that in the event such Party, directly or indirectly, breaches any of the provisions of this Agreement, or threatens or attempts to do so, the Non-Breaching Party may be irreparably harmed. Accordingly, the non-Breaching Party may be entitled to seek the granting of injunctive or other equitable relief in favor of the non-Breaching Party without proof of actual damages. Such injunctive or equitable relief will not be the exclusive remedy for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity and in addition to any remedies afforded to the Parties in the Loan Sale Agreement.

10. Fees and Expenses. If either Party commences an action against the other to enforce any of the provisions of this Agreement or because of the breach by either Party of any of the provisions of this Agreement, the losing Party will pay to the prevailing Party reasonable

attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of the action.

11. No Waiver. Each of the Parties acknowledges and agrees that any failure or delay by any Party in exercising any right or privilege under this Agreement will not operate as a waiver of such right or privilege.

12. Further Assurances. At any time and from time to time after the date hereof, each of the Parties, at the reasonable request of the other Party and at the cost and expense of the Party making the request, shall execute and deliver any further documents or agreements and take such further actions as may be reasonably required for carrying out the intentions or facilitating the consummation of this Agreement.

13. Third Party Beneficiary. This Agreement is solely for the benefit of the Parties. No other person, party or entity shall have any right hereunder nor shall any other person, party or entity be entitled to rely upon the terms, covenants and provisions contained herein.

14. Authority. The Parties hereby represent that the signatory for each has the actual authority to execute this Agreement and to bind his/her respective Party.

15. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns and successors in interest of each of the Parties to this Agreement.

16. Severability. In the event that any of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. Headings. The descriptive headings of the several sections and paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one document. Signatures obtained via facsimile, photocopy or electronic photocopy (e.g., "PDF") shall be deemed originals in all cases.

19. Survival. Each and every covenant, term, representation, warranty and agreement made by the Parties in this Agreement shall survive the Closing of the Loan Sale Agreement and shall not merge into the closing documents but, instead, shall be independently enforceable.

**[remainder of page intentionally left blank; signature page follows]**



**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

**COMERICA BANK,**  
a Texas banking association

By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:

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Subject to Confidentiality Agreement