

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

	)	
<b>In re</b>	)	
	)	<b>Chapter 11</b>
<b>SW BOSTON HOTEL VENTURE LLC, et al.<sup>1</sup></b>	)	<b>Case No. 10-14535 (JNF)</b>
	)	
<b>Debtors.</b>	)	
	)	

**JOINT PRETRIAL MEMORANDUM**

Prudential Insurance Company of America on behalf and solely for the benefit of, and with its liability limited to the assets of, its insurance company separate account, PRISA (“Prudential”) and SW Boston Hotel Venture LLC (“SW Boston”), Auto Sales & Service, Inc. (“Auto Sales”), General Trading Company (“General Trading”), Frank Sawyer Corporation (“Sawyer Corporation”), 100 Stuart Street, LLC (“Stuart Street”), General Land Corporation (“General Land”), 131 Arlington Street Trust (“Arlington Street”) and 30-32 Oliver Street Corporation (“Oliver Street”) (collectively the “Debtors” and excluding SW Boston the “Related Debtors”) and the City of Boston, a Municipal Corporation in the Commonwealth of Massachusetts, acting by and through its Public Facilities Commission by the Director of the Department of Neighborhood Development (“City of Boston”) submit the following Joint Pretrial Memorandum, in compliance with the Court’s order of August 30, 2010, with respect to the *Motion of Prudential Insurance Company of America for Relief from the Automatic Stay*

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<sup>1</sup> The other Debtors in these jointly administered cases are Auto Sales & Service, Inc. (Case No. 10-14528-JNF), General Trading Company (Case No. 10-14532-JNF), Frank Sawyer Corporation (Case No. 10-14533-JNF), 100 Stuart Street, LLC (Case No. 10-14534-JNF), 30-32 Oliver Street Corporation (Case No. 10-16173-JNF), General Land Corporation (Case No. 10-16174-JNF), and 131 Arlington Street Trust (Case No. 10-16177-JNF).

*Pursuant to 11 U.S.C. § 362(d)* [docket no. 201] (the “Motion for Relief”). The Debtors and Prudential are sometimes collectively referred to as the “Parties”.

**A. FACT WITNESSES**

**1) Prudential’s Witnesses**

- a) Prudential expects to present:
  - 1) Joanna Mulford  
Prudential Real Estate Investors  
8 Campus Drive  
Parsippany, NJ 07054  
(973) 683-1743
  - 2) Carol Parks Sawyer  
61 Heath Hill  
Brookline, MA 02445

**2) The Debtors’ Witnesses**

- a) The Debtors expect to present:
  - 1) Kevin Ahearn  
Otis & Ahearn  
200 Newbury Street  
Boston, MA 02116  
(888) 249-7041
  - 2) Lawton Bloom  
Argus Management Corporation  
15 Keith Hill Road, Suite 100  
Grafton, MA 01519  
(508) 839-1828
  - 3) Derek Flanagan  
Argus Management Corporation  
15 Keith Hill Road, Suite 100  
Grafton, MA 01519  
(508) 839-1828
  - 4) Paul Griesmer  
FTI Consulting  
750 Third Ave., 27th Floor  
New York, NY 10017

(212) 840-7383

5) Marc Shapiro  
FTI Consulting  
101 Eisenhower Parkway  
Roseland, NJ 07068  
(973) 287-5431

6) M. Freddie Reiss  
FTI Consulting  
633 West 5th Street, Suite 1600  
Los Angeles, CA 90022  
(213) 689-1200

b) The Debtors may call if the need arises:

1) Steven Kravetz  
200 Newbury Street  
Boston, MA 02116<sup>2</sup>

3) **The City of Boston's Witnesses** – None

**B. WITNESSES BY DEPOSITION**

1) **Prudential's Witnesses** – None

2) **The Debtors' Witnesses** – None

3) **City of Boston's Witnesses** – None

**C. EXPERT WITNESSES**

1) **Prudential's Expert Witnesses**

a) Randell L. Harwood, MAI, CRE, FRICS, certified appraiser in the firm of Cushman & Wakefield, 125 Summer Street Boston, MA 02110. Mr. Harwood is expected to testify about his appraisals of the subject condominiums located at the W Hotel at 100 Stuart Street, and the

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<sup>2</sup> Prudential objects to Mr. Kravetz's testimony at trial. The Debtors failed to timely disclose him as a potential witness, despite repeated requested from Prudential to identify all trial witnesses, and hence Prudential has not been afforded the opportunity to depose Mr. Kravetz prior to trial resulting in undue prejudice to Prudential.

ancillary collateral properties located at 109, 121-127& 131 Arlington Street and 25-27 Pinckney Street.

- b) Eric B. Lewis MAI, MRICS, certified appraiser in the firm of Cushman & Wakefield, 1290 Avenue of the Americas, 9th Floor, New York, NY 10104. Mr. Lewis is expected to testify about his appraisal of the W Hotel located at 100 Stuart Street.
- c) James Peko is a principal with the firm of Grant Thornton LLP, 666 Third Avenue, 13<sup>th</sup> Floor, New York, NY 10104. He is expected to testify about debt restructuring, strategic planning, and financial issues.

## **2) The Debtors' Expert Witnesses**

- a) Kevin Ahearn, licensed realtor, President of Otis & Ahearn, a Boston residential brokerage firm that also acts as a consultant and onsite marketing agent for new condominium developments. He has 30 years of experience in the Boston real estate market. He is expected to testify regarding the marketing, sales, and leasing of Condominium Units
- b) Lawton Bloom, Managing Partner of Argus Management Group. He holds a M.P.A. from Cornell University. He is expected to testify about a financial model respecting the Debtors' restructuring.
- c) Derek Flanagan is a Managing Director at Argus Management Group. He is expected to testify regarding the Debtors' financial and operational performance.
- d) Paul Griesmer, FRICS, CRE, is a Senior Managing Director in the Corporate Finance division of FTI Consulting Group, member of the

Association of Insolvency and Restructuring Advisors, NAIOP, Urban Land Institute and the Real Estate Finance Association of Boston. He is expected to testify regarding his appraisal of the W Hotel and Condominium Units

- e) Marc Shapiro, MAI, certified real estate appraiser, Managing Director of the Corporate Finance division of FTI Consulting Group is expected to testify regarding his appraisal of the additional collateral
- f) M. Freddie Reiss, CTP, CPA, and CIRA, a fellow of the American College of Bankruptcy, member of Corporate Finance division of FTI Consulting Group. He is expected to testify regarding the prospects for a plan for reorganization for the Debtors.

**3) Third Party City of Boston Expert Witnesses**

- a) Rachel Roginsky, ISHC, is a principal of the Pinnacle Advisory Group, 164 Canal Street, 5<sup>th</sup> Floor, Boston, MA 02114. Ms. Roginsky is expected to testify about Pinnacle's appraisal of the W Hotel located at 100 Stuart Street.
- b) Pamela McKinney, MAI, CRE, is the Director of Appraisal Services at the Pinnacle Advisory Group, 164 Canal Street, 5<sup>th</sup> Floor, Boston, MA 02114. Ms. McKinney is expected to testify about Pinnacle's appraisal of the W Hotel and Residences located at 100 Stuart Street.

**D. OBJECTIONS TO QUALIFICATIONS OF EXPERT WITNESSES**

**1) The Debtors' and City of Boston's Objections to Prudential's Experts.**

- a) **Randell Harwood.**

The Debtors and the City of Boston object to the testimony of Randell Harwood to the extent that Mr. Harwood intends to offer any opinion testimony beyond that which is set forth in his appraisal of the residential condominiums as of May 24, 2010. Mr. Harwood should not be permitted to proffer any opinion testimony with respect to the current state of the condominium market, to update or supplement his opinion of value or to revise his opinions set forth in his appraisal. Mr. Harwood's testimony should be so limited for the following reasons:

- 1) Pursuant to the Pretrial Order entered by this Court, Prudential was required to file on or before September 13, 2010, any supplemental or updated appraisals. Prudential did not file a supplemental or updated appraisal with respect to Mr. Harwood's opinion of value as to the Condominiums (as defined below). Accordingly, in accordance with the Pretrial Order, Mr. Harwood should be prohibited from offering opinions of value other than as set forth in his appraisal.
- 2) Mr. Harwood was deposed by the Debtor on October 26, 2010. In that deposition, the Debtors made specific inquiries of Mr. Harwood with respect to whether anything had come to his attention that would lead him to believe that his opinion of value as of May 24, 2010 should be modified or revised or whether he had an update/supplement opinion of value as to the Condominiums. Mr. Harwood, at his deposition, indicated that he had not formed any opinion other than as set forth in his appraisal, and that "he would reserve judgment until he did further analysis." He further specifically testified that he had no updated opinion or analysis as of October 26, 2010.

Since Prudential did not provide any supplemental or updated appraisal report by the time provided for in the Pretrial Order, nor was Mr. Harwood able to testify with respect to questions

specifically directed to him as to any supplemental or updated reports or analysis, Mr. Harwood's opinion testimony should be limited to those opinions expressed in his Appraisal dated as of May 24, 2010.

**b) James Peko.**

The Debtors and the City of Boston object to testimony by James Peko on the basis that Prudential has failed: (i) to produce the documents relied upon by Mr. Peko in formulating his opinion with respect to whether the interest rate set forth in a certain presentation by Argus dated September 23, 2010 (the "Argus Presentation") is a market rate of interest, and (ii) establish Mr. Peko's qualifications and appropriateness if the knowledge necessary to testify as to the reasonableness if the sellout period for the Condominiums. At his deposition on October 25, 2010, Mr. Peko was asked as to the substance of his expert testimony. Mr. Peko indicated two topics upon which he expected to render opinions. The first was whether the interest rate set forth in the Argus Presentation was "market." The second topic was the feasibility of a plan based upon the financial model set forth in the Argus Presentation.<sup>3</sup> When asked with respect to the basis for his opinion on the market rate of interest, Mr. Peko referenced certain market indices that he reviewed. Based upon those documents, he reached his conclusion. Notwithstanding requests from the Debtors' counsel, only one of the various documents Mr. Peko relied upon for his opinion have been provided. When asked whether he would be providing any other expert opinion with respect to interest rates, such as an opinion as to what would be an appropriate market interest, Mr. Peko's testimony was either "not sure" or "unclear," but in any event, he could not provide any information to the Debtors as to his

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<sup>3</sup> The parties agreed that experts would not be required to prepare reports as required by Rule 26 of the F.R.C.P., but, in lieu, would produce the documents the experts relied upon and consent to a deposition where the opposing party could make inquiries into the expert opinions and the bases for those opinions.

analysis or ultimate conclusions as to market interest. Accordingly, Mr. Peko should be prohibited from offering any expert opinion with respect to interest rates.

Alternatively, to the extent he is permitted to testify with respect to an interest rate, his testimony should be limited solely to the statement that in his opinion the rate set forth in the Argus Presentation is below “market” without any further elaboration or support. For the same reasons, Mr. Peko should be prohibited from providing any opinion testimony with respect to the “*Till*” analysis. Mr. Peko should be prohibited from testifying regarding any *Till* analysis because, when questioned during his deposition, Mr. Peko testified he had no knowledge of the case or the standards set forth in the case.

Mr. Peko should be prohibited from rendering any opinions with respect to the feasibility of a plan because his opinion is based upon the reasonableness of the “sell-through of the condos.” Mr. Peko has no qualifications relating to the marketing, sale or valuation of condominium properties, and has reviewed no information with respect to the current market or market analyses on which he could base an opinion. The sole basis for his testimony is that he looked at SW Boston’s actual performance prior to the week of October 25, 2010, and prior to SW Boston’s recent sale of five (5) units and concluded, based on that analysis, that a thirty-six month sellout of the Condominiums would be unreasonable. Mr. Peko’s testimony directly contradicts the opinions of Randell Harwood, the expert offered by Prudential for valuation of the Condominiums, Paul Griesmer, the Debtors’ expert on the valuation of the Condominiums, and Kevin Ahearn, the Debtors’ expert on the marketing and sale of the Condominiums. Accordingly, Mr. Peko should be prohibited from testifying as an expert as to interest rates and feasibility.

**2) Prudential’s Objections to Debtors’ Experts – None**

**3) Prudential's Objections to the City of Boston's Experts**

To the extent that any testimony of Mr. Harwood beyond that contained in his May 24, 2010 appraisal is precluded, Prudential objects to any testimony of Ms. Roginsky and Ms. McKinney beyond what is contained in their appraisal dated September 15, 2009.

**E. EXHIBITS TO BE OFFERED**

**1) Agreed to Exhibits.**

- a) Cushman & Wakefield Appraisal of 109, 121-127, and 131 Arlington Street dated May 25, 2010 – Exhibit 1.
- b) Cushman & Wakefield Appraisal of 25-27 Pinckney Street dated May 25, 2010 – Exhibit 2.
- c) Cushman & Wakefield Appraisal of the W Boston Residences, 100 Stuart Street, Boston, MA as of May 24, 2010 – Exhibit 3.
- d) Cushman & Wakefield Appraisal of the W. Hotel Boston, 100 Stuart Street, Boston, MA as of May 24, 2010 – Exhibit 4.
- e) FTI Appraisal of 109, 121-127 Arlington Street – Exhibit 5.
- f) FTI Appraisal of 131 Arlington Street – Exhibit 6.
- g) FTI Appraisal of 25-27 Pinckney Street – Exhibit 7.
- h) FTI Appraisal of the W Hotel and parking dated August 31, 2010 – Exhibit 8.
- i) FTI Appraisal of W Boston Residences dated August 1, 2010 – Exhibit 9.
- j) Document entitled “Argus Management Financial Consulting – Interim Management - Presentation prepared for Hanify & King, P.C.,” dated September 23, 2010 – Exhibit 10.

- k) Letter from Steve Kravetz to James Gersten, President of Culinary Concepts (Boston) LLC, re: "Restaurant Management Agreement," dated September 7, 2010 – Exhibit 11.
- l) Trigen Lease Agreement – Exhibit 12.

**2) Prudential's Exhibits (Not Agreed to).**

- a) Document entitled "Argus Management Financial Consulting – Interim Management - Presentation prepared for Hanify & King, P.C.," dated September 15, 2010, SW-AR\_000878-887– Exhibit Pru A.
- b) Letter from Otis & Ahearn re: "W Boston – Sales & Marketing Strategy," prepared by Kevin J. Ahearn, dated October 15, 2007, SW-OA\_009662-9669 – Exhibit Pru B.
- c) Spreadsheet re: Condominiums remaining and Condominiums sold – Exhibit Pru C.
- d) Document entitled "Condo Sellout (June 2010 – Dec 2013) Summary," SW-AR\_000483-499 – Exhibit Pru D.
- e) Document entitled "SW Boston Hotel Venture LLC: Reviewed Financial Statements: Years Ended December 31, 2009 and 2008," SW-020832-20840 – Exhibit Pru E.
- f) Document entitled "100 Stuart Street LLC, Reviewed Financial Statements: Years Ended December 31, 2009 and 2008," SW\_000790-797 – Exhibit Pru F.

- g) Document entitled “131 Arlington Street Trust, Reviewed Financial Statements: Years Ended December 31, 2009 and 2008,” SW\_000798-805 – Exhibit Pru G.
- h) Document entitled “30-32 Oliver Street Corporation, Reviewed Financial Statements: Years Ended December 31, 2009 and 2008,” SW\_000806-813 – Exhibit Pru H.
- i) Document entitled “Frank Sawyer Corporation, Reviewed Financial Statements: Years Ended December 31, 2009 and 2008,” SW\_000814-824 – Exhibit Pru I.
- j) Document entitled “General Land Corporation, Reviewed Financial Statements: Years Ended December 31, 2009 and 2008,” SW\_000825-832 – Exhibit Pru J.
- k) Document entitled “General Trading Company, Reviewed Financial Statements: Years Ended December 31, 2009 and 2008,” SW\_000833-842 – Exhibit Pru K.
- l) Document entitled “Auto Sales and Service, Inc., Reviewed Financial Statements: Years Ended December 31, 2009 and 2008,” SW\_020870-20878 – Exhibit Pru L.
- m) Document entitled “Pace Report: W Boston Hotel & Residences 2010,” dated August 3, 2010, SW\_016882 – Exhibit Pru M.
- n) Document entitled “Post Condo Sellout (June 2010 – Dec 2013) Summary,” SW-AR\_000121-132 – Exhibit Pru N.

- o) Document entitled “Argus Management Financial Consulting – Interim Management - Presentation prepared for Hanify & King, P.C.,” dated September 2010, SW-AR\_000947-961 – Exhibit Pru O.
- p) E-mail from Steve Kravetz to Derek Flanagan re: “Remaining Units – Post Filing.xlsx,” dated June 17, 2010, SW\_021918 – Exhibit Pru P.
- q) Document entitled “Argus Management Financial Consulting – Interim Management - Presentation prepared for Hanify & King, P.C.,” dated September 15, 2010, SW-AR\_000997-1007 – Exhibit Pru Q.
- r) Document entitled “Marketing/Sales Overview and Strategy To Date & Going Forward,” dated January 22, 2009, SW\_003616-3617 – Exhibit Pru R.
- s) E-mail from Steve Kravetz to Larry Trabulsi, re: “condo sellout schedule,” dated December 3, 2009, SW\_020053-20055 – Exhibit Pru S.
- t) E-mail from Steve Kravetz to Larry Trabulsi, re: “Otis & Ahearn,” dated January 21, 2010, SW\_020244 – Exhibit Pru T.
- u) E-mail from Steve Kravetz to Steve Kravetz, “Unit by Unit,” dated March 29, 2010, SW\_020571-20575 – Exhibit Pru U.
- v) News article entitled “Downtown condo sales may be down, but prices are not, Boston’s luxury market guru contends,” dated September 15, 2009, SW-OA\_010927 – Exhibit Pru V.
- w) Document entitled “W Boston Weekly Meeting Agenda,” dated August 9, 2010, SW-OA\_008828-8829 – Exhibit Pru W.

- x) E-mail from Barbara Mihalko to Kristin Brown, et al, re: “Daily Traffic 8/16/17,” dated August 17, 2010, SW\_016973-16975 – Exhibit Pru X.
- y) Spreadsheet entitled “Competitive Set – Units Sold Between 1/1/09 – 7/1/10,” prepared by FTI Consulting, SW-OA\_004469-4473 – Exhibit Pru Y.
- z) E-mail from Derek Flanagan to Steve Kravetz, re: “\$100k Parking Valuation,” dated August 27, 2010, SW\_017309 – Exhibit Pru Z.
- aa) Document entitled “W Boston Weekly Meeting Agenda,” dated September 13, 2010, SW-OA\_008838-8839 – Exhibit Pru AA.
- bb) Document entitled “General overview of Current Market,” SW-OA\_012006 – Exhibit Pru BB.
- cc) Spreadsheet entitled “Purchase and Sale Report,” dated August 13, 2010, SW-OA\_004379-4381 – Exhibit Pru CC.
- dd) Letter from Barbara Mihalko to Kevin Ahearn, dated August 17, 2010, SW-OA\_067848-67849 – Exhibit Pru DD.
- ee) Email from Lara Rosenburgh to Kevin Ahearn, re: “hopefully one last question,” dated April 15, 2010, SW-OA\_032356-32357 – Exhibit Pru EE.
- ff) Spreadsheet re: retail and minimum condo pricing, SW-OA\_010074-10077 – Exhibit Pru FF.
- gg) Spreadsheet entitled “W Boston Residences Scheduled/Pending Closing Report,” SW-OA\_013789 – Exhibit Pru GG.

- hh) Document entitled “Potential Questions for Sales at Both of Thursday’s Events,” dated June 1, 2010, SW-OA\_014539 – Exhibit Pru HH.
- ii) Untitled document, stating “Like our buyers – you are not alone,” SW-OA\_014463 – Exhibit Pru II.
- jj) Email chain between Lara Rosenburgh and Alex Nasson, dated January 14, 2009, SW-OA\_014460-14461 – Exhibit Pru JJ.
- kk) Document entitled “Year-End 2008 Downtown Condominium Summary + Comparisons to 2005 and 2007,” prepared by Kevin Ahearn, dated February 2, 2009, SW-OA\_012523-12523 – Exhibit Pru KK.
- ll) Spreadsheet containing information relating to condo sales, SW-AR\_000683-695 – Exhibit Pru LL.
- mm) Spreadsheet entitled “FTI vs C&W Valuation Comparison,” SW-AR\_000800-867 – Exhibit Pru MM.
- nn) Document entitled “SW Boston Hotel Venture LLC – Reviewed Financial Statements – Years Ended December 31, 2009 and 2008,” SW\_000843-851 – Exhibit Pru NN.
- oo) Spreadsheet entitled “Condo Sell Down Period (June 2010 – Dec 2010) Assumptions,” SW-AR\_000567-000579 – Exhibit Pru OO.
- pp) Letter from John Connolly to Brian Schultz, Director, Residential Services and Operations, Starwood Hotels & Resorts, re: “W Boston Hotel and Residences,” dated January 20, 2010, SW-FTI\_000352-354 – Exhibit Pru PP.

- qq) Summary Appraisal Report, 25-27 Pinckney Street, Boston, Massachusetts, prepared by Colliers Meredith & Grew, dated July 28, 2009, SW\_022026-22098 – Exhibit Pru QQ.
- rr) Sellout Analyses, SW\_023405-23406, SW\_023512 and SW\_003636-3637 – Exhibit Pru RR.
- ss) Letter to Joanna Mulford from the Renatus Group, dated October 18, 2010, PRU\_008261-8263 – Exhibit Pru SS.

**3) The Debtors' Exhibits (Not Agreed to).**

- a) Actual to Budget for the period from the Petition Date through October 31, 2010 – Exhibit Debtors 1.
- b) Cash Collateral Projections for the period December 1, 2010 through June 30, 2011– Exhibit Debtors 2.
- c) Summary of Closed Purchase and Sale Agreements, reflecting unit, date, price – Exhibit Debtors 3.
- d) Schedule of Pending Purchase and Sale Agreements (reflecting the unit, price and projected closing date) and Pending Accepted Reservations – Exhibit Debtors 4.
- e) Schedule of Pending Leases, reflecting unit and commencement date and monthly lease amount – Exhibit Debtors 5.
- f) Schedule of property against which Prudential asserts liens, reflecting the nature of the property and its value – Exhibit Debtors 6.
- g) Otis & Ahearn Weekly Market Watch Report, dated October 29, 2010, SW-OA\_070784 – Exhibit Debtors 7.

4) **City of Boston's Exhibits.**

- a) Pinnacle Appraisal of the W Boston Hotel and Residences (as of completion of the Hotel on October 22, 2009, on completion of the Residences on December 31, 2009, and on stabilization of the Hotel on October 22, 2013) – City Exhibit 1.

5) **Anticipated Chalks.**

- a) **Prudential's Chalks.**<sup>4</sup>
  - i) Map of the subject area – Pru Chalk 1.
  - ii) Map of the subject area in relation to comparable hotels – Pru Chalk 2.
  - iii) Actual vs. projected Condominium sales proceeds for the period from the Petition Date through November 14, 2010 – Pru Chalk 3.
  - iv) Projected Condominium sales based on historical experience – Pru Chalk 4.
  - v) Condominium sales price trends – Pru Chalk 5.
  - vi) Projected cash flow based on Argus presentation dated September 23, 2010 – Pru Chalk 6.
    - a. Sensitized for changes in condominium pricing and interest rates.
  - vii) Projected cash flow based on historical condominium sales trends – Pru Chalk 7.
    - a. Sensitized for changes in interest rates.

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<sup>4</sup> Although the Court's scheduling order does not require disclosure of chalks at this time, Prudential herewith provides for the Court's convenience a list of chalks it may use at trial. Prudential reserves the right to use additional or different chalks should the need arise.

- viii) Implied lodging loan pricing schedule – Pru Chalk 8.
- ix) Chesapeake lodging trust loan summary – Pru Chalk 9.
- x) FelCor lodging trust incorporated loan summary – Pru Chalk 10.
- xi) Chart reflecting luxury condo sales volume – Pru Chalk 11.
- xii) Link Boston data analysis – Pru Chalk 12.
- xiii) Chart reflecting luxury condo sales average price per square foot – Pru Chalk 13.

b) **The Debtors' Chalks.**

- i) Chalk reflecting the change in Cushman & Wakefield's stated value of the Hotel if the projected income from the Theme Bar is included in revenues and the cost of completion for the Spa is excluded from expenses – Debtors' Chalk 1.
- ii) Chalk reflecting the value of the Condominiums if lease income from the lease of certain Condominiums (the "Lease Income") is included in the cash flow utilized by Cushman & Wakefield to determine its discounted cash flow – Debtors' Chalk 2.
- iii) Chalk reflecting change in value of the Hotel if the costs of completing the Spa and the Theme Bar are not included in the discounted cash flow utilized by FTI – Debtors' Chalk 3.
- iv) Chalk reflecting change in value of the Condominiums if Lease Income is included in the discounted cash flow utilized by FTI – Debtors' Chalk 4.

c) **City of Boston Chalks.**

- i) Chalk summarizing the updated Pinnacle valuation of the W Hotel and Residence, contrasted with similar information from the FTI and Cushman & Wakefield appraisals – City Chalk 1.

**F. OBJECTIONS TO EXHIBITS**

The Parties may introduce any exhibits included in the other Party's exhibit list and may use additional documents for impeachment or rebuttal purposes. Except for the agreed to exhibits, the Parties reserve the right to object to any exhibit proposed at trial. The Parties reserve the right to supplement this disclosure as appropriate, and specifically reserve the right to supplement their rebuttal witnesses or exhibits to this list as appropriate.

**G. EXCHANGE OF EXHIBITS**

The parties have exchanged copies of all proposed exhibits. The Parties will provide the Court with copies of the agreed to exhibits and the exhibits as to which no agreement exists.

**H. AGREED UPON FACTS<sup>5</sup>**

- 1) SW Boston owns the "W Hotel and Residences", a real estate development in the City of Boston. SW Boston was capitalized with land, which the Debtors' claim had an approximate value of \$18 million, approximately \$25 million in cash, and financing of over \$190 million. SW Boston owns and operates the W Hotel and Residences, a 350,650 square foot, 26-story building located at 100 Stuart Street in the heart of Boston's Theatre District. The following businesses are located on and operated on this property: the "W" Hotel (the "Hotel"), 123 condominium units (the "Condominiums"), a parking garage and valet parking service (the

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<sup>5</sup> The Agreed Upon Facts contained herein are stipulated facts for this proceeding only and are without prejudice to the rights of the parties in any other proceeding or hearing concerning this matter.

“Garage”), a restaurant and lobby bar (the “Restaurant”), a retail store (the “Store”) and the Spa (the “Spa”) and a theme bar (the “Theme Bar”).

- 2) The Hotel is managed by an affiliate of Starwood Hotels and Resorts Worldwide, Inc. (“Starwood”). The Spa is managed by Bliss. The Garage is managed by Ultimate Parking, LLC. The Restaurant is managed by Culinary Concepts (Boston), LLC. The Theme Bar has not yet opened for business, but when completed will be managed by an affiliate of Starwood.
- 3) This is the first significant hotel or condominium development project the Debtors have developed.
- 4) SW Boston originally obtained a commitment for construction financing for the W Hotel and Residences in 2007 from HSH Nordbank AG (“HSHN”), a German bank. The HSHN loan was in the amount of \$192.2 million. Shortly before the scheduled loan closing, in September 2007, HSHN decided to cease making loans in the United States, withdrew its commitment to make the loan, and paid SW Boston a termination fee for doing so. As a result, SW Boston was required to find an alternate source of financing. Prudential agreed to provide the Prudential Loan of \$190.2 million to SW Boston.
- 5) On January 15, 2008, Prudential, as lender, SW Boston, as borrower, and other parties entered into a Construction Loan Agreement (the “Prudential Loan Agreement”), pursuant to which Prudential agreed to lend SW Boston up to \$192.2 million (the “Prudential Loan”) for the construction of the real property located at 100 Stuart Street, Boston, Massachusetts. To secure SW Boston’s obligations under the Prudential Loan Agreement, SW Boston and Prudential

entered into a Mortgage, Security Agreement, Fixture Filing and Assignment of Sales Contracts and Deposits (together with the Prudential Loan Agreement and all exhibits, schedules, related documents, and supplements thereto, and as may be amended from time to time, granting Prudential a security interest and mortgage on SW Boston's real and personal property, and the proceeds of all of the foregoing (the "Prudential Security Interest"). Prudential holds a valid, perfected security interest in the Property.<sup>6</sup>

- 6) In addition to the Prudential Security Interest, the following parties, guaranteed and/or pledged collateral as security for the Prudential Loan as follows (collectively, the "Additional Prudential Security"):
- a) Frank Sawyer Corporation ("FSC") issued a Payment Guaranty, a Carveout Guaranty and a Completion Guaranty (collectively, the "FSC Guarantees") and executed pledge and control agreements with respect to a securities account. FSC also collaterally assigned its interest in the subscription agreement of the Frank Sawyer Trust;
  - b) 30-32 Oliver Street Corporation granted Prudential a mortgage on and an assignment of leases and rents from real property located at 25 and 27 Pinckney Street, Boston, Massachusetts and guaranteed FSC's obligations under the FSC Guarantees;
  - c) Auto Sales & Services, Inc. guaranteed FSC's obligations under the FSC Guarantees and executed pledge and control agreements with respect to a securities account;

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<sup>6</sup> Any statements regarding Prudential's liens set forth in this pre-trial statement are made without prejudice to the Debtors and the Committee's rights to challenge such liens in accordance with the Court's cash collateral orders (as extended).

- d) General Trading Company guaranteed FSC's obligations under the FSC Guarantees and executed pledge and control agreements with respect to a securities account;
  - e) SW Boston additionally executed pledge and control agreements with respect to two accounts at Sovereign Bank;
  - f) 131 Arlington Trust guaranteed FSC's obligations under the FSC Guarantees and granted Prudential a first lien mortgage on real property located at 131 Arlington Street, Boston, Massachusetts;
  - g) General Land Corporation guaranteed FSC's obligations under the FSC Guarantees and granted Prudential a first lien mortgage on real property located at 109 and 121-127 Arlington Street, Boston, Massachusetts;
  - h) SE Berkeley Street, LLC and SE McClellan Highway, LLC obtained a letter of credit from Sovereign Bank in favor of Prudential (the "Letter of Credit"); and
  - i) 100 Stuart Street LLC pledged 100% of its membership interests in SW Boston Hotel Venture LLC.
- 7) In addition to the Prudential Loan Agreement, SW Boston entered into a Subordinate Loan Agreement with the City of Boston (the "City"), pursuant to which the City agreed to provide a \$10,500,000 loan of HUD Section 108 funds (the "City Loan"). The proceeds of the City Loan were intended to finance the completion of the Market Lounge and Restaurant, the Spa and the Theme Bar. As collateral for the City Loan, SW Boston granted to the City a second priority

security interest and mortgage on and an assignment of leases and rents from the Property.

- 8) The Parties have agreed to the value of the following property as to which Prudential asserts liens:
- a) 131 Arlington Street – The Debtors’ appraiser valued 131 Arlington Street at \$1,850,000, and Prudential’s appraiser valued 131 Arlington Street at \$1,200,000. Solely for the purposes of the trial on the Motion for Relief, the Parties have agreed that the value of 131 Arlington Street is \$1,525,000.
  - b) 109 & 121-127 Arlington Street – The Debtors’ appraiser valued 109 & 121-127 Arlington Street at \$2,400,000, and Prudential’s appraiser valued 109 & 121-127 Arlington Street at \$2,800,000. Solely for the purposes of the trial on the Motion for Relief, the Parties have agreed that the value of 109 & 121-127 Arlington Street is \$2,600,000.
  - c) 25 Pinckney St., Boston – The Debtors’ appraiser valued 25 Pinckney St., Boston at \$1,160,000, and Prudential’s appraiser valued 25 Pinckney St., Boston at \$1,200,000. Solely for the purposes of the trial on the Motion for Relief, the Parties have agreed that the value of 25 Pinckney St., Boston is \$1,180,000.
  - d) 27 Pinckney St., Boston – The Debtors’ appraiser valued 27 Pinckney St., Boston at \$1,020,000, and Prudential’s appraiser valued 27 Pinckney St., Boston at \$750,000. Solely for the purposes of the trial on the Motion for

Relief, the Parties have agreed that the value of 27 Pinckney St., Boston is \$885,000.

- 9) On April 28, 2010 (the "Petition Date"), SW Boston, Auto Sales, General Trading, Sawyer Corporation and Stuart Street filed Chapter 11 petitions. As of the Petition Date, the Debtors owed Prudential approximately \$180.8 million. Following the Petition Date, Prudential immediately exercised its right to draw on the Letter of Credit in the amount of \$17.3 million. On June 4, 2010, General Land, Oliver Street and Arlington Street filed Chapter 11 petitions.
- 10) The Condominiums closed to date include:

<b>Unit</b>	<b># of Bedrooms</b>	<b>Closing Date</b>
19F	One	12/16/2009
18H	One	12/21/2009
17D	One	12/21/2009
18D	Studio	12/23/2010
17I	Studio	12/23/2009
18I	Studio	12/31/2009
19I	Studio	1/4/2010
19H	One	1/8/2010
16I	Studio	2/4/2010
22C	One	3/5/2010
22D	Studio	3/5/2010
27H	One	3/10/2010
19A	One	4/16/2010

16F	One	5/24/2010
19J	One	5/26/2010
18A	One	5/27/2010
PH4	Two	8/6/2010
22J	One	8/12/2010
27B	Two	8/20/2010
17A	Two	10/25/2010
24D	One	11/1/2010
25D	One	11/1/2010
26B	Three	11/1/2010
26D	One	11/1/2010
21I	One	11/2/2010

- 11) The Condominiums that have not closed to date include: 21H, 17H, 16A, 16H, 19D, 18F, 18J, 16B, 16C, 16D, 16E, 16G, 17B, 17C, 17E, 17F, 17G, 18B, 18C, 18E, 18G, 18C, 18E, 18G, 19B, 19C, 19E, 19G, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21J, 22A, 22B, 22E, 22F, 22G, 22H, 22I, 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, 23I, 23J, 24A, 24B, 24C, 24E, 24F, 24G, 24H, 24I, 24J, 25A, 25B, 25C, 25E, 25F, 25G, 25H, 25I, 25J, 26A, 26C, 26E, 26F, 26G, 26H, 26I, 26J, 27A, 27C, 27D, 27E, 27F, 27G, 27I, 27J, PH1, PH2, PH3, PH5.
- 12) As of November 3, 2010, SW Boston has closed twenty-five Condominium sales. Between the Petition Date and November 2, 2010, SW Boston closed twelve

Condominium Sales. Between the Petition Date and November 3, 2010, Prudential received a total of approximately \$9,153,883 from the sale of Condominiums.

- 13) The aggregate of all of the allowed, non-insider, unsecured claims against all of the Debtors is estimated to be between \$3 million and \$4 million.

**I. DISPUTED ISSUES OF FACT**

- 1) What is the value of the collateral for the Prudential Loan by item (the “Collateral”).
- 2) Whether the forecasted sales velocity of the Condominiums is appropriate in light of the Debtors’ sales performance to date.
- 3) Whether the Debtors will be able to reduce the principal balance of the Prudential Loan to a level that enables the Debtors to operate their businesses and make debt service payments on a market term and at a market rate.
- 4) Whether the Debtors have an equity interest in the Collateral after all of the claims against it are satisfied.
- 5) Whether SW Boston has effectively managed the construction and management of the Hotel, including the Theme Bar and Spa, and the Condominiums.
- 6) Whether SW Boston has effectively managed the sale of the Condominiums.
- 7) Whether the Debtors are capable of proposing a confirmable plan of reorganization.
- 8) Whether the W Hotel and Residences is necessary for an effective reorganization by the Debtors that is in prospect.

- 9) Whether the value of the entire collateral package provided by the Debtors and against which Prudential asserts liens exceeds the amount of Prudential's claim.
- 10) Whether, in conjunction with and as a condition to making the Prudential Loan, Prudential demanded, in addition to the collateral provided by SW Boston, collateral with a value in excess of \$30 million from the Related Debtors and non-debtor affiliates.
- 11) Whether, as of November 3, 2010, SW Boston has: (a) four (4) executed purchase and sale agreements for the sale of four (4) Condominiums that will generate a total of approximately \$2,519,900 in net proceeds, before closing costs, and (b) three (3) executed reservations for the sale of four (4) Condominiums that will generate a total of approximately \$5,694,800 in net proceeds before closing costs.
- 12) Whether, as of November 3, 2010, SW Boston has entered into seven (7) leases of and/or use and occupancy agreements for Condominiums that will generate gross rental proceeds of approximately \$27,150 per month.

**J. DISPUTED ISSUES OF LAW**

- 1) Whether sufficient cause exists for this Court to grant Prudential's motion for relief from stay pursuant to 11 U.S.C. § 362(d).
- 2) Whether the Court must consider the value of all of the collateral against which Prudential asserts liens in determining whether relief from the automatic stay is appropriate.
- 3) Whether the W Hotel and Residences is necessary for an effective reorganization that is in prospect.

**K. STATEMENT OF PRUDENTIAL'S CASE**

Prudential has moved this Court to lift the automatic stay and foreclose on the real property located at 100 Stuart Street, Boston, Massachusetts, comprised of a W Hotel and 123 condo units above the Hotel (the "Property"). The Property is the single asset of SW Boston who is responsible for overseeing the completion of the construction of the Hotel and selling Condominiums. This motion should be granted for two primary reasons. First, SW Boston has demonstrated and continues to demonstrate that it is incapable of protecting Prudential's security interest in the Property. The value of the Property continues to decline while the negative gap between the value of Prudential's loan and the value of the collateral increases, leaving Prudential under-secured by approximately \$21,400,000. Second, SW Boston has failed to put forth a confirmable plan for reorganization. SW Boston's suggestion that a reorganization at a 5.25% rate of interest is feasible is patently flawed.

SW Boston has failed to protect Prudential's security interest because the Debtor has no equity cushion in the Property. On January 15, 2008, Prudential loaned the Debtors up to \$192.2 million for the construction of the Hotel and the Condominiums of which approximately \$162.4 million plus interest, costs and fees remains outstanding and unpaid, if the proceeds received to date are applied solely to principal. If however the proceeds are applied in accordance with the applicable loan documents, the amount outstanding is significantly higher.<sup>7</sup> Prudential's appraisal of the Property reveals that the value of the Property is approximately \$141 million - significantly less than the amount of the Prudential Loan.

This decline in value of the Property is attributable to SW Boston's failure to conceive or execute an effective sales strategy for the Condominiums. From the Petition Date through May

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<sup>7</sup> In the event Prudential is found to be over-secured, it intends to reapply the proceeds in accordance with the loan documents and to seek adequate protection payments from the Debtors.

2010, SW Boston closed sales for only three of the eleven units that had been under contract from before the commencement of the Chapter 11 case. From May 2010 to the present, SW Boston has closed only twelve Condominium sales, eight of which are one bed rooms.<sup>8</sup> While SW Boston forecasted that it would close thirteen sales from April 28, 2010 through August 2010, it has closed only twelve sales for the entire period from April 28, 2010 *through the present*. During September 2010, a traditionally busy month in the real estate market, SW Boston closed *no sales*. What is more, the Debtors' appraisal of the Condominiums illustrates that the W sold fewer two bedroom units than its competitors from January 2009 to June 2010. These results are far below management's expectations and the expectations of Debtors' own experts. From the Petition Date to November 14, 2010, Debtors' projected sales of Condominiums was \$17.75 million. Actual sales were \$12.025 million which results in a \$5.725 million shortfall. Without question, the Debtors' Condominium sale performance has been insufficient to show that it can propose a feasible plan. At its current pace of Condominium sales, it will take SW Boston many years pay off its debt to Prudential.

The decline in value of the Property also is attributable to SW Boston's failure to effectively complete construction of the Property in a timely manner and sell the Condominiums as projected. The Debtors' lack of experience managing a significant real estate development project such as the Property is overtly apparent as the Debtors have missed important deadlines and completion dates and suffered substantial cost overruns. For example, the Debtors have not re-commenced construction of the so-called Theme Bar, almost a year after its originally intended completion date, and only in August 2010 opened the Spa. The Theme Bar has been bogged down with a failure to obtain required regulatory approvals for months, and the Building

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<sup>8</sup> While the Debtor may attempt to showcase that it closed six units in October and November 2010, several of those units were previously under contract and should have closed months ago.

Code Appeals Board currently is reviewing the decision of the City of Boston Appeals Board to grant a variance related to the fit-out of the Theme Bar. It remains unclear when, if at all, the Theme Bar will open. And while the Spa opened in August 2010, its opening was constantly delayed. The Spa was initially projected to open in October 2009, postponed until February 2010, and again to May 2010, July 2010 and then August 2010. Such delays have resulted in increased costs at the Property in the form of training and paying personnel that are not needed and lost revenues from the operation of the facility. These amenities were (i) projected to provide \$2.3 million in revenue to support the repayment of the Prudential Loan and (ii) relied upon by Starwood in agreeing to manage the Property under the “W” flag. Moreover, the failure to complete the Theme Bar potentially jeopardizes the Starwood contract, an essential element to the success of the Property.

Further, due to the lack of Condominium sales, Condominium carrying costs and professional fees are well in excess of the Debtor’s owner distributions from the hotel and have been primarily funded by Condominium sales proceeds thereby diminishing Prudential’s collateral value. From the Petition Date through November 14, 2010, the actual and projected professional fees are approximately \$1.3 million. Adding in real estate taxes and HOA fees on unsold units, the carrying costs far surpass the Debtor’s owner distributions from the hotel, which amount to \$2.2 million for the Petition Date through the week of November 14, 2010.

The second reason Prudential is entitled to relief from the automatic stay is because SW Boston has no equity stake in the Property and has not proposed and cannot propose any feasible method of reorganization that will adequately protect Prudential. The total value of all liens encumbering the Property is approximately \$172 million plus interest, fees and costs. The value

of the Property is approximately \$141 million, leaving SW Boston with negative net equity in the Property of approximately \$32 million.

SW Boston cannot satisfy its burden of showing a reasonable possibility of a successful reorganization within a reasonable time. SW Boston has not taken any meaningful steps towards the proposal of a feasible plan. The only proposal that SW Boston has put forth contemplates a 5.25% rate of interest for Prudential that does not have SW Boston servicing any debt to Prudential until 2014. Moreover, the Debtors' own experts have repeatedly admitted that they do not have a market basis to support that interest rate. This is because a 5.25% rate of interest is not a market rate of interest. It is unquestionably low. With a loan to value ratio of approximately 92%, as proposed by the Debtors, a reasonable market rate of interest is at least 12%, assuming the Debtors could even obtain such financing in the marketplace. Moreover, the Debtors' plan contemplates a sellout of the Condo Units by 2014, yet Debtors' own experts have suggested this sellout horizon needs to be extended past the 36 month mark, owing to the Debtors' inability to effectuate Condo Unit sales as projected. Finally, it goes without saying that a plan that does not contemplate any debt service to Prudential until 2014 does not satisfy the feasibility requirement of § 1129(a)(11) of the Bankruptcy Code. Thus, there is little to no chance that a reorganization can be achieved in the near term.

For these reasons, Prudential respectfully requests that this Court enter an Order lifting the automatic stay to permit Prudential to exercise any/or all of its lien rights and remedies under the Prudential Loan Documents, and for such other and further relief as the Court deems proper.

**L. STATEMENT OF THE DEBTORS' CASE**

Prudential has moved for relief from the automatic stay, under Sections 362(d)(1) and (d)(2) of the Bankruptcy Code, solely as to the Hotel and Condominiums, but is unable to establish grounds for relief either under of these sections.

**1) Prudential's Interests Are Adequately Protected.**

Although Prudential is slightly undersecured as to SW Boston, the value of the entire collateral package provided to Prudential by all of the Debtors substantially exceeds the amount of Prudential's claim and that collateral is sufficient to adequately protect Prudential's interests. The value of the Hotel and Condominiums has been enhanced during the administration of the Debtors' cases by, among other things, the revenues generated from the Hotel, the ancillary businesses within the Hotel, the completion of the construction work on the Hotel, completion of the Spa and the payment to Prudential of the net proceeds of the sale of Condominiums, all of which provide Prudential with additional adequate protection for its interests.

Between the Petition Date and October 31, 2010, the Debtors have generated positive net cash flow of approximately \$900,000, resulting in an increase in cash collateral of that amount. Between the Petition Date and November 3, 2010, SW Boston has closed a total of twelve (12) Condominium sales, from which Prudential has been paid a total of approximately \$9,153,000 for application to its claim. As of November 3, 2010, SW Boston has four (4) executed and pending purchase and sale agreements for the sale of four (4) Condominiums that are scheduled to generate a total of approximately \$2,519,900 in net proceeds, before closing costs, and three (3) executed reservations for the sale of four (4) Condominiums that will generate a total of approximately \$5,694,800 in net proceeds before closing costs. As of November 3, 2010, SW

Boston has entered into seven (7) leases of and/or use and occupancy agreements for Condominiums that will generate gross rental proceeds of approximately \$27,150 per month.

Prudential's allegation that the Hotel and Condominiums are declining in value is meritless. To the contrary, the Debtors have enhanced the value of the Hotel and Condominiums and Prudential's, and indeed all creditors' interests are adequately protected. Prudential cannot show cause for relief from the automatic stay under Section 362(d)(1) of the Bankruptcy Code and the Motion for Relief must be denied.

2) **Prudential is Not Entitled to Relief From The Automatic Stay Under Section 362(d)(2).**

Prudential cannot show a lack of equity in the collateral package securing its asserted claims against the Debtors, nor can it show that the Hotel and Condominiums are not necessary for an effective reorganization.

That the Hotel and Condominiums are necessary for an effective reorganization cannot be disputed. The Debtors are working on a plan, based on the projected lease and sellout of the Condominiums, the revenue from the Hotel and the other businesses located in the Hotel and Condominiums, and the assets and revenues of the Related Debtors, that will pay all non-insider creditors in full. The Debtors' plan is in prospect. The development of that plan includes, among other things, completion of the Hotel amenities, the refinement of the operations of these newly-opened businesses, the completion of SW Boston's leasing program, the closeout of SW Boston's construction contract with its general contractor and the establishment of a sellout schedule and pricing that will be a key component of the plan.

While the plan is still in process and the Debtors continue to work to complete the project and refine their operations, prima facie evidence that a plan is in prospect is set forth in the Argus Presentation. The Argus Presentation is a model that forecasts the cash flow that will be

generated from the sellout of the Condominiums and the continued Hotel operations and is based on the cash flow projections in the appraisals performed by FTI. The cash flow projections in the FTI appraisals are substantially similar to the cash flow projections developed and utilized by Prudential's real estate appraisers, Cushman & Wakefield, in their appraisals. The Argus Presentation demonstrates that an orderly sellout of the Condominiums and the restructuring of the Prudential indebtedness with a reasonable rate of interest will result in the reduction of Prudential's claim to a level that can be comfortably serviced from the Hotel operations, and that there will be sufficient revenue to pay all other non-insider claims in full. The Argus Presentation is merely one potential plan scenario that the Debtors are considering while they continue to operate the Hotel, complete the project and sell and lease Condominiums in the ordinary course of business.

Accordingly, Prudential cannot establish that the Hotel and Condominiums are not necessary for an effective reorganization and the Debtors have established the reasonable possibility of reorganization within a reasonable time. Grounds for relief from the automatic stay under Section 362(d)(2) of the Bankruptcy Code do not exist and the Motion for Relief must therefore be denied.

**M. STATEMENT OF CITY OF BOSTON'S CASE**

The City of Boston expects to establish through expert testimony that the fair market value of the W Hotel as of October 1, 2010 was \$62.2 million and that the value of the W Residences (including the value of the leasing program) was \$94.9 million, so that, in the aggregate, the W Hotel and Residences' value is on the order of \$157.1 million. Further, the debtors' additional collateral securing the Prudential Loan has value of about \$14 million. The Prudential principal loan balance, as of October 31, 2010 was \$157.5 million. Therefore, when the value of the W Hotel and Residences is considered in conjunction with the value of the

additional collateral, there is a sufficient equity cushion to protect Prudential's claim.

Accordingly, Prudential's interests are adequately protected, and there is no reason to lift the automatic stay.

**N. ESTIMATED TRIAL LENGTH**

Prudential estimates that the trial will take 3-5 days. The Debtors do not believe that the trial should take more than two (2) days.

Dated at Boston, Massachusetts, November 3, 2010.

SW Boston Hotel Venture LLC

By its Attorney,

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Prudential Insurance Company of America on behalf and solely for the benefit of, and with its liability limited to the assets of, its insurance company separate account, PRISA

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The City of Boston a Municipal Corporation in the Commonwealth of Massachusetts, acting by and through its Public Facilities Commission by the Director of the Department of Neighborhood Development

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, by first class mail, on November 3, 2010.

/s/ John B. Daukas  
John B. Daukas