

WHEN RECORDED, RETURN TO:

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01-0001-0127

**DEED OF TRUST, SECURITY AGREEMENT AND  
FIXTURE FILING FINANCING STATEMENT**

**Cover Sheet**

**DATE:** September 18, 2020

**BORROWER/TRUSTOR:** HOTEL MOAB LLC, a Utah limited liability company

**BORROWER'S NOTICE ADDRESS:** 1018 W. Atherton Drive  
Taylorsville, UT 84125

**TRUSTEE:** COTTONWOOD TITLE INSURANCE AGENCY,  
INC. a Utah corporation, and all successors and assigns

**TRUSTEE'S NOTICE ADDRESS:** 1544 N. Woodland Park Drive, Suite 300  
Layton, UT 84041

**BENEFICIARY:** PROTECTIVE LIFE INSURANCE COMPANY, a  
Tennessee corporation, together with other holders  
from time to time of the Note (as defined herein).

**BENEFICIARY'S NOTICE ADDRESS:** 2801 Highway 280 South  
Birmingham, Alabama 35223  
Attention: Investment Department 3-3ML

**NOTE AMOUNT:** \$25,000,000.00

**MATURITY DATE:** October 1, 2023

**STATE:** Utah

**RECORD OWNER OF LAND  
(AS DEFINED HEREIN):** HOTEL MOAB LLC, a Utah limited liability  
company

**ADDITIONAL BORROWER  
INFORMATION:** Borrower is an organization  
Type of Organization - Limited liability company  
Jurisdiction of Organization - Utah  
Organizational Identification No. 9136724-0160

**Exhibits A and B:** Attached hereto and incorporated herein by reference.

1. DEFINITION OF TERMS. As used herein, the terms defined in the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the following meanings:

- 1.1. Borrower's Notice Address: as defined on Cover Sheet.
- 1.2. Casualty: as defined in Paragraph 5.1.
- 1.3. Collateral Assignment: that certain Collateral Assignment of Franchise Agreement, Contracts and Permits of even date herewith executed by Borrower for the benefit of the Beneficiary.
- 1.4. Comfort Letter: that certain comfort letter, dated September \_\_\_\_, 2020, issued by the Franchisor (as defined in Paragraph 1.9 below) for the benefit of Beneficiary.
- 1.5. Commitment: as defined in Paragraph 4.3.
- 1.6. Contested Sum: as defined in Paragraph 4.1.
- 1.7. Contracts: all contracts and agreements relating to or governing the use, occupancy, operation, management, hotel group, name or chain affiliation, guest reservation, repair and service of the hotel project, including, without limitation, guest rooms and related amenities located on the Realty, and all Leases, occupancy agreements, concession agreements and commitments to provide rooms or facilities in the future, including all amendments, modifications and supplements to any of the foregoing. The term "Contracts" specifically includes, without limitation, the Management Agreement.
  - 1.7.1 Easement Agreement; that certain Easement Agreement (Access Drive and Parking Area), dated Sept. 18, 2020, by and between Borrower and Hotel Moab II, LLC, a Utah limited liability company, recorded Sept. 18, 2020, as Entry No. 538610, in Book 904 at Page 162 of the Official Records of Grand County, Utah.
- 1.8. Events of Default: as defined in Paragraph 7.1.
- 1.9. Franchise Agreement: that certain Franchise Agreement and Addendum thereto with an Effective Date of June 17, 2015, between Hilton Franchise Holding LLC, a Delaware limited liability company, as franchisor (the "Franchisor"), and the Borrower, as franchisee.
- 1.10. Improvements: all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personality.
- 1.11. In its sole unfettered discretion: as defined in Paragraph 9.8.
- 1.12. Indenture: this Deed of Trust, Security Agreement and Fixture Filing Financing Statement.
- 1.13. Insurance Premiums: as defined in Paragraph 4.3.
- 1.14. Insurance Proceeds: as defined in clause (a) of Paragraph 5.3.
- 1.15. Land: the land described in Exhibit A attached hereto, together with all estate, title interests, title reversion rights, remainders, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water, water rights, water courses, ditch rights, water stock, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, including, without limitation, the Easement Agreement, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of

Borrower therein or thereto, either in law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or hereafter appertaining to, the Land.

1.16. **Laws:** as defined in clause (c) of Paragraph 4.2.

1.17. **Leases:** all leases, license agreements, concessions and other occupancy or use agreements (including without limitation, agreements for the use and occupancy of hotel rooms and other public facilities by guests of the hotel project operated at the Realty) (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenue, income and other benefits of the Property and fees, charges, accounts and other payments arising from the occupancy, use or enjoyment thereof, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants and hotel guests of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent or room charges coming due.

1.18. **Lease Assignment:** a certain Assignment of Rents and Leases by Borrower in favor of Beneficiary of even date herewith and all modifications or amendments thereto or extensions thereof.

1.19. **Licenses and Permits:** all business licenses, variances, entitlements, certificates, state health department licenses, liquor licenses, food service licenses, licenses to conduct business, certificates of need and all other permits, licenses and rights obtained from any Governmental Authority (as defined in Paragraph 4.2(c) below) or any private party.

1.20. **Loan Documents:** this Indenture, the Note, the Lease Assignment, Collateral Assignment, Comfort Letter, and Security Agreement, the guaranty, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Beneficiary but specifically excluding the separate environmental indemnity agreement, and together with the Subordination of Management Agreement, executed by the Borrower, and Western States Lodging & Management II, LLC, a Utah limited liability company ("WSLM II") and Hospitality Management Services, LLC, a Utah limited liability company (HMS") (WSLM II and HMS, collectively the "Managers") for the benefit of Lender.

1.21. **Management Agreement:** that certain Hotel Management Agreement, dated November 28, 2017, between the Borrower, as Owner and Western States Lodging & Management II, LLC, a Utah limited liability company ("WSLM II"), and Hospitality Management Services, LLC, a Utah limited liability company (HMS"), both WSLM II and HMS, collectively, as Managers.

1.22. **Note:** a certain Promissory Note of even date herewith made by Borrower in favor of and payable to the order of Beneficiary in the Note Amount and all modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date (as defined in the Note and on the Cover Sheet).

1.23. **Parties in Interest:** as defined in clause (d) of Paragraph 7.1.

1.24. **Personalty:** all of Borrower's right, title and interest in the personal property of any kind or nature whatsoever, whether tangible or intangible, whether now owned or hereinafter acquired, whether or not any of such personal property is now or becomes a "fixture" or attached to the Realty, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all fees, charges, accounts, and other payments for the use and occupancy of hotel rooms and other public facilities located upon the Realty, all accounts, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), general intangibles (including payment intangibles and software), goods (including consumer goods, inventory, equipment and farm products, which include, by way of illustration, and not by way of limitation, all appliances, artwork, cleaning equipment, communication systems, dishware, elevators, equipment (including all specialized equipment for kitchens, laundries, bars, restaurant, public rooms, health and recreational facilities), escalators, fire

prevention and extinguishing equipment and systems, floor coverings, guest room furnishings, hall equipment, HVAC systems, linens, lobby equipment, machinery, maintenance equipment, reservation system computer and related equipment, security systems, signs, spa equipment, sprinkler systems, swimming pool equipment and accessories, and window coverings), letter-of-credit rights and deposit accounts (as those terms are defined in the UCC), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, Contracts, Licenses and Permits, guarantees, warranties, causes of action, judgments, claims, profits, rents, royalties, issues, revenue, income, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies, claims and proceeds of insurance, proceeds and claims arising from condemnation, motor vehicle and aircraft, together with all present and future attachments, accretions, accessions, replacements and additions thereto and proceeds, products and proceeds thereof.

1.25. **Property:** the Realty and Personalty or any portion thereof or interest therein except as the context otherwise requires.

1.26. **Property Liabilities:** as defined in clause (d) of Paragraph 4.1.

1.27. **Property Taxes and Charges:** as defined in clause (b) of Paragraph 4.1.

1.28. **Realty:** the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.29. **Reserved.**

1.30. **Secured Debt:** to the extent not prohibited by Laws, all principal, interest, additional interest, interest at the After-Maturity Rate set forth in the Note on all applicable sums, late charges and other sums, charges, prepayment fees and premiums or amounts due or to become due under the Loan Documents, together with any other sums, together with interest thereon at the After-Maturity Rate, expended or advanced by Beneficiary under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents.

1.31. **Security Agreement:** that certain Security Agreement (Hotel) of even date herewith executed by the Borrower for the Beneficiary.

1.32. **State:** as defined on cover hereof.

1.33. **Taking:** as defined in Paragraph 5.1.

1.34. **Taking Proceeds:** as defined in clause (a) of Paragraph 5.3.

1.35. **UCC:** the Uniform Commercial Code of the State in effect from time to time or, if the creation, perfection, priority and enforcement of any security interest herein granted is governed by the laws of a state other than the State, then, as to the matter in question, the Uniform Commercial Code in effect in that state from time to time.

2. **GRANTING CLAUSES AND OBLIGATIONS SECURED.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells and conveys to Trustee, its successors and assigns, IN TRUST FOREVER, with all POWERS OF SALE AND STATUTORY RIGHTS in the State, all of Borrower's estate, right, title and interest in, to and under, and grants to Beneficiary a first and prior security interest in, the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

(a) All Leases;

(b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;

(c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and

(d) All Insurance Proceeds and all Taking Proceeds.

All of the foregoing is hereinafter referred to as the "Encumbered Property."

This Indenture is also intended to be and constitutes a security agreement under the Uniform Commercial Code as now adopted and amended from time to time in the State with respect to all of the Encumbered Property which is subject to Article 9 of the Uniform Commercial Code, in addition to and supplemental to this Security Agreement and Borrower hereby grants Beneficiary a security interest therein. Time is of the essence.

**FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO BENEFICIARY, in such order of priority as Beneficiary may elect:**

(1) Payment of the Secured Debt;

(2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Beneficiary or advanced under the Loan Documents (at the After-Maturity Rate set forth in the Note), even if the sum of the amounts outstanding at any time exceeds the Note Amount;

(3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

**TO HAVE AND TO HOLD** the Encumbered Property and all parts thereof unto Beneficiary and its successors and assigns forever, subject, however, to the terms and conditions herein.

**3. REPRESENTATIONS AND WARRANTIES.** Borrower hereby represents and warrants to Beneficiary that the following warranties and representations in this paragraph are and will be true, correct and complete at all times:

**3.1. Due Organization, Authority.** If Borrower is a corporation, partnership (general, limited or joint venture), limited liability company or a trust, Borrower is duly organized and validly existing, and in good standing under the laws of the State and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

**3.2. Execution, Delivery and Effect of Loan Documents.** The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

**3.3. Other Obligations.** Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by

**Borrower.** Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

Borrower shall give Beneficiary prompt written notice of (a) the proposed creation of any county, municipal, quasi-governmental or other improvement or special district of any nature and (b) any action in respect to such district, which may affect the Property, including, without limitation, any proposed service plan or modification of such plan, proposed organization of such district and election in regard to such organization, the proposed issuance of bonds by such district and election in regard to such issuance and the proposed inclusion of the Property in any such district, and Borrower shall not consent to the creation of any such district or any such action in respect to such district without the prior written consent of the Beneficiary, which consent shall not be unreasonably withheld.

**3.4. Construction and Completion of Improvements.** The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws, the Franchise Agreement and the plans and specifications previously delivered to, and approved in writing, by Beneficiary. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Beneficiary hereunder as part of the Property, whether located on the Land or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Beneficiary. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to Beneficiary, and that Beneficiary will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

**3.5. Legal Actions.** There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Beneficiary. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best of Borrower's knowledge and belief, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents, or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

**3.6. Financial Statements.** All statements, financial or otherwise, submitted to Beneficiary in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects, and all such financial statements (excluding those from the guarantor) have been prepared in accordance with modified GAAP accounting principles, which must be acceptable to Beneficiary, consistently applied, and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.

3.7. Reserved.

3.8. **Adverse Change to Property.** No event or series of events has or have intervened or occurred since the date of Borrower's submission of the Commitment which would, either individually or collectively, have a material adverse effect on the Property.

3.9. **Title to Property.** Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personalty and Borrower warrants and shall forever defend the title thereto and Beneficiary's first and prior lien thereto and security interest therein unto Beneficiary, its successors and assigns, against the claims of all persons whomsoever subject only to the permitted exceptions ("Permitted Exceptions") set forth on Exhibit B attached hereto and incorporated herein.

3.10. **Compliance with Laws, Licenses and Permits, and Private Covenants.** The Property complies with all Laws, Licenses and Permits, and, private covenants. The Land is a separate and distinct parcel for tax purposes and shall not become subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Property, including, without limitation, the Easement Agreement, the Licenses and Permits, the Franchise Agreement and the Management Agreement, and there now exists no violation of any such agreements. Borrower has no notice that any of the Improvements encroaches upon any easement over the Land or upon adjacent property, except as set forth in the Easement Agreement.

3.11. **Independence of the Property Zoning and Development.** Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence, use or operation of such property, building or improvements, except to the extent provided for in the Easement Agreement; and no improvement on the Property shall rely on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal requirement, except to the extent provided for in the Easement Agreement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

Without the prior written consent of Beneficiary, Borrower will not seek, make or consent to any change in the zoning or conditions of use of the Property. Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Property, including, without limitation, the Easement Agreement, the Licenses and Permits, the Franchise Agreement and the Management Agreement, and shall not without Beneficiary's prior written consent (a) file any declaration and constituent documents of any condominium, townhome, cooperative or planned development project for the Property, or (b) join in the amendment or rescission of any covenants, conditions or restrictions now or hereafter affecting the Property, including without limitation, the Easement Agreement, the Licenses and Permits, the Franchise Agreement and the Management Agreement. Borrower will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property.

3.12. **Environmental.** Borrower is a party to and has executed this date in favor of Beneficiary an Environmental Indemnification. For purposes of this Indenture, Borrower hereby restates and confirms the representations and warranties contained in the Environmental Indemnification and, although not secured by this Indenture, hereby covenants to comply with and perform the obligations contained in the Environmental Indemnification.

3.13. **Compliance with ERISA and State Statutes on Governmental Plans.** Borrower is not an "employee benefit plan" as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") nor a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code, and (ii) the assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Borrower represents and warrants to Beneficiary that, as of the date of this Indenture and throughout the term of this Indenture, (i) Borrower is not a "governmental plan" within the meaning of ERISA and (ii) transactions by or with Borrower are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

3.14. Franchise Agreement and Management Agreement. The Borrower has provided Beneficiary with full and complete copies of the Franchise Agreement and the Management Agreement. The Franchise Agreement and the Management Agreement are in full force and effect and no default has been claimed or currently exists under the Franchise Agreement or the Management Agreement.

#### 4. BORROWER'S COVENANTS.

##### 4.1. Payments.

(a) Secured Debt. Borrower shall pay promptly to Beneficiary, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.

(b) Property Taxes and Charges. Except as provided in Paragraph 4.1(c), and subject to Paragraph 4.4. below, Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imposts, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Beneficiary with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

If requested by Beneficiary, Borrower, at the sole cost and expense of Borrower, shall cause to be furnished to Beneficiary a tax reporting service covering the Property of the type and duration, and with a company satisfactory to Beneficiary.

(c) Taxes on Trustee or Beneficiary. If any Law of the State or the United States or any other governmental authority imposes upon Trustee or Beneficiary the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents or Trustee or Beneficiary, then Borrower shall pay Property Taxes and Charges or reimburse Trustee and Beneficiary immediately therefor, unless in the opinion of counsel to Trustee or Beneficiary, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.

(d) Liabilities. Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restorations and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(e) Right to Contest. Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Beneficiary. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower (A) deposits with Beneficiary cash or other security, in form satisfactory to Beneficiary in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Beneficiary therefor, together with interest, costs and penalties thereon, or (B) if required to do so by Law, pays the Contested Sum to the appropriate taxing authority as a condition to such contest, and (ii) Borrower promptly causes to be paid any amounts adjudged to



be due, together with all costs, penalties and interest thereon, before execution on any such amount and in any event within ten (10) days after such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(f) Expenses. Borrower shall, to the extent allowed by Law, pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, attorneys' fees (both outside and in-house counsel) and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents; (ii) Trustee or Beneficiary's exercise and enforcement of their respective rights and remedies under Paragraphs 6, 7, and elsewhere hereof; and (iii) Trustee or Beneficiary's protection of the Property and their respective interest therein.

(g) Servicing Fees. Borrower shall be solely responsible for any reasonable legal and/or actual processing fees and costs incurred or charged by Beneficiary or its third-party loan servicer for any servicing-related matter arising during the term of the Loan. Borrower agrees to immediately reimburse Beneficiary or such servicer upon Beneficiary's request for any such legal and/or processing fees and costs.

Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (g).

#### 4.2. Operation of the Property.

(a) Maintenance; Alterations. Borrower shall maintain and preserve the Property, or cause the Property to be maintained and repaired in good repair and condition, in strict compliance with the Franchise Agreement, and shall maintain adequate reserves to perform any remodeling and maintenance as may be required by the Franchisor under the Franchise Agreement, and shall correct any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Beneficiary in each instance; provided, however, Borrower may make replacements or substitution of any items of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture.

(b) Liens. Subject to Borrower's rights under Paragraph 4.1(e) above, Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property.

(c) Compliance with Laws, Licenses and permits, and Private Covenants. Borrower shall truly keep, observe and satisfy all, and not suffer violations of any Federal, regional, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives, or decrees of any governmental or regulatory authority ("Governmental Authority"), court or arbitrator (herein collectively "Laws"), the Licenses and Permits and private covenants affecting the Property, including without limitation, the Easement Agreement, the Franchise Agreement and Management Agreement. Borrower shall use its best efforts to give Beneficiary telephonic notice within one (1) day, and shall give Beneficiary written notice (which shall include a copy of any notice received by Borrower) within three (3) days, of Borrower's receipt of any notice received by or on behalf of Borrower with respect to Borrower's noncompliance with any of the provisions of any covenants, conditions or restrictions now or hereafter affecting the Property, including without limitation, the Easement Agreement, the Franchise Agreement and Management Agreement. If Borrower fails to correct the conditions specified in the notice to it, Beneficiary may do so at the sole cost and expense of Borrower, and Borrower shall reimburse Beneficiary for such cost and expense upon demand. Any amounts so

expended by Beneficiary shall bear interest at the After-Maturity Rate specified in the Note from the date of expenditure until repaid to Beneficiary, and shall be secured by this Indenture.

(d) Use and Management. The Property shall at all times be used for commercial purposes. The Property shall at all times be managed by the Managers or a manager/operator which has been approved by Beneficiary and the Franchisor prior to execution of any management agreement with the same. Any change in the use of the Property or the management agent shall be subject to the prior written approval of Beneficiary and, if applicable, the Franchisor.

(e) Inspection. Borrower shall permit Trustee or Beneficiary to enter upon and inspect the Property at reasonable times without delay, hindrance or restriction.

(f) Unlawful Use and Prohibited Activities. The Borrower shall not use, occupy, or permit the use or occupancy of any Property by the Borrower or any lessee, tenant, occupant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state, or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law (collectively, "Prohibited Activities"). Any lease, license, sublease or other agreement for use, occupancy or possession of any Property (collectively a "lease") with any third person ("lessee") entered into after the date of this Indenture shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. The Borrower shall upon demand from Beneficiary provide Beneficiary with a written statement setting forth its compliance with this section and stating whether any Prohibited Activities are occurring in or on the Property. If the Borrower becomes aware that any lessee is engaged in any Prohibited Activities, the Borrower shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities.

This section is a material consideration and inducement upon which Beneficiary relies in extending credit and other financial accommodations to the Borrower.

In addition and not by way of limitation, the Borrower shall indemnify, defend and hold Beneficiary harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of, or related to any Prohibited Activities at or on the Property, Prohibited Activities by the Borrower or any occupant of the Property, or the Borrower's breach, violation, or failure to enforce or comply with any of the covenants set forth in this section. This indemnity includes, without limitation, any claim by any governmental entity or agency, any occupant, or any third person, including any governmental action for seizure or forfeiture of any Property (with or without compensation to Beneficiary, and whether or not Property is taken free of or subject to Beneficiary's lien or security interest).

4.3. Insurance. Borrower shall obtain and keep in force, with one or more insurers acceptable to Beneficiary, such insurance as Beneficiary may from time to time specify by notice to Borrower, including, without limitation, insurance providing:

(a) Property Insurance.

(i) "all risk" or "special risk" hazard insurance policy (Acord 28) insuring the Realty against all hazards, including, without limitation, flood (if required by Beneficiary), earthquake (if required by Beneficiary), windstorm/hail and collapse, with the coverage amount of such insurance being not less than one hundred percent (100%) of the full replacement cost of the Realty without deduction for depreciation (and either having no coinsurance or an agreed amount clause with no more than a \$25,000.00 deductible and no terrorism exclusions);

(ii) "all risk" or "special risk" hazard insurance policy (Acord 28) insuring the Personality against all hazards, including, without limitation, flood (if required by Beneficiary), earthquake (if required by Beneficiary), windstorm/hail and collapse, with the coverage amount of such insurance being not less than one hundred percent (100%) of the full replacement cost of the Personality without deduction for depreciation (and either having no

coinsurance or an agreed amount clause with no more than a \$25,000.00 deductible and no terrorism exclusions);

(iii) business income/rents insurance (including extra expense) against loss of income arising out of any hazard, expressly including the COVID-19 virus and any other pandemic, against which the Realty and/or Personalty is required to be insured in an amount not less than one hundred percent (100%) of one (1) year's payments (computed upon the principal and interest installment payments) due under the Note and including at least a 6 month/180 day extended period of indemnity;

(iv) boiler & machinery/equipment breakdown coverage equal to full replacement cost, including loss of income/rents with a joint loss agreement - 100% replacement cost including electric machinery, equipment, air conditioning, refrigeration & mechanical objects;

(v) ordinance or law coverage with the following limits: Part A coverage: Loss to the undamaged portion of the Property, equal to the building limit; Part B coverage: demolition and debris removal, minimum 15% of replacement cost; and Part C coverage: increased cost of construction, minimum 15% of replacement cost;

(vi) if required by the Beneficiary, terrorism (including both foreign and domestic acts) to be included in the coverage for full limits and stated on the insurance certificate; and

(vii) if required by the Beneficiary, wind/hail/named storm coverage in the coverage amount and with a deductible as approved by the Beneficiary.

(b) Liability Insurance.

(i) comprehensive commercial general liability ("CGL") insurance policy (Accord 25) (written on an occurrence basis) with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and a Two Million Dollar (\$2,000,000) annual general aggregate limit, Two Million Dollars (\$2,000,000) in products/completed operations aggregate coverage, One Million Dollars (\$1,000,000) in personal and advertising injury liability coverage, Fifty Thousand Dollars (\$50,000) in fire damage legal liability coverage, Five Thousand Dollars (\$5,000) in medical expense payments coverage, professional services liability coverage in the amount approved by the Beneficiary (if the Property is a full service resort, as determined by Beneficiary) and, if the Property is engaged in the business of selling alcoholic beverages, dram shop coverage providing coverage in an amount approved by the Beneficiary;

(ii) hospitality management errors and omissions insurance of One Million Dollars (\$1,000,000) per claim/occurrence and One Million Dollars (\$1,000,000) in aggregate coverage providing coverage against professional liability arising out of the management and operations of the Property;

(iii) cyber liability insurance having a coverage limit of One Million Dollars (\$1,000,000);

(iv) commercial auto liability insurance covering automobiles owned, hired or used by Borrower in carrying on its business (if applicable) with limits not less than One Million Dollars (\$1,000,000) combined single limit for each accident;

(v) workers compensation insurance as required by the applicable state law;

(vi) employers liability insurance with limits not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee; and

(vii) umbrella/excess insurance coverage on a follow form basis in excess of the CGL, employers liability and commercial auto liability policies with limits not less than

Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate.

All insurance carriers (a) must have a minimum rating of "A+/IX" according to Best's Insurance Reports - Property/Casualty Edition, (b) must have a claims paying rating of least single "A" by two approved rating agencies, (c) must be a stock company or a non-assessable mutual company located in a country acceptable to Beneficiary, and (d) must be licensed in the State.

All property insurance policies described in subparagraph (a) above shall (1) be evidenced on an ACORD 28 certificate, (2) include a lender's loss payable endorsement and mortgage holder's clause as allowed in the State and which names Beneficiary as the first mortgagee with loss payable to Beneficiary as such mortgagee, (3) shall not be cancelable or modifiable without thirty (30) days' prior written notice to Beneficiary (ten (10) days for non-payment of premium), and (4) shall not have more than a \$25,000 deductible.

All liability insurance policies described in subparagraph (b) above shall (1) be evidenced on an ACORD 25 certificate, (2) name Beneficiary as an additional insured, (3) shall not be cancelable or modifiable without thirty (30) days' prior written notice to Beneficiary (ten (10) days for non-payment of premium), and (4) shall not have more than a \$25,000 deductible.

Borrower shall provide Beneficiary with evidence of compliance with (a) this Paragraph 4.3., and (b) Section 2.9 of the loan commitment, dated June 29, 2020, for the loan evidenced by the Loan Documents (the "Commitment") in the indicated forms or such other forms as may be required from time to time by Beneficiary upon notice from Beneficiary or at least fifteen (15) days (or such other time period as mandated by applicable State law) prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Beneficiary that such payment has been made shall be delivered by Borrower to Beneficiary.

All insurance policies must contain a waiver of subrogation in favor of Beneficiary. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable.

Beneficiary shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency that establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

Upon foreclosure of this Indenture or other transfer of title or assignment of the Property in discharge, in whole or part of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Beneficiary.

4.4. Reserve Account. Subject to the following paragraph, Borrower shall pay to Beneficiary monthly, on each date on which a payment is due under the Note, one-twelfth (1/12th) of such amount as Beneficiary from time to time estimates will be required to pay all Property Taxes and Charges and Insurance Premiums before becoming past due. Beneficiary's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made adjusted to reflect for any anticipated increases for the coming year. Beneficiary may require Borrower to pay one-sixth (1/6th) of said estimate as escrow coverage, which may be retained by Beneficiary in escrow from year to year. Any deficiencies shall be promptly paid by Borrower to Beneficiary on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Beneficiary has received from Borrower or on its account funds sufficient to pay the same, Beneficiary shall, except as provided in Paragraph 7.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for

such purposes may be made by Beneficiary at its discretion even though subsequent owners of the Property may benefit thereby. Beneficiary shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds. Upon the occurrence of an Event of Default hereunder, Beneficiary may apply, at any time and in such order as Beneficiary may determine, the balance then remaining in the account accumulated under this Paragraph against the amounts due and payable under the Note, this Indenture or any other Loan Document.

Beneficiary agrees to waive the requirements under the foregoing paragraph that Borrower pay to Beneficiary monthly escrow installments for Property Taxes and Charges and Insurance Premiums subject to the following conditions ("Conditions"), which must be met on a continuous basis throughout the term of the Note, and the further reservation set forth below:

- (a) No default after any applicable period of notice and cure shall exist under the Note or the other Loan Documents;
- (b) No change shall occur in the ownership or management of the Property from that which exists as the closing of the loan evidenced and secured by the Loan Documents; and
- (c) Subject to the provisions of Paragraph 4.1(e) hereof, Property Taxes and Charges and Insurance Premiums shall be paid promptly when due and without accrual of interest or penalty, and Borrower shall promptly furnish to Beneficiary satisfactory evidence of such payment on an annual basis.

Notwithstanding the foregoing, Beneficiary reserves the right to revoke its waiver (x) if any one or more of the Conditions are at any time not satisfied, or (y) at any time that Beneficiary, in its sole unfettered discretion, deems such revocation necessary to protect the security granted by this Indenture or any of the other Loan Documents for the Secured Debt.

4.5. (a) Sales and Encumbrances. Borrower and the Principal (as defined in Paragraph 4.5(c) below), shall not, without the prior written consent of Beneficiary, which consent, if given in Beneficiary's sole unfettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the terms of the Note, delivery of a management contract approved by Beneficiary with a management company approved by Beneficiary, and/or the satisfaction of other conditions required by Beneficiary or one or more of the foregoing or other requirements of Beneficiary:

(i) convey, assign, sell, transfer, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein, or any or all of the rents, issues, deposits or profits therefrom; or

(ii) except as otherwise specifically provided for, below, in this Section 4.5. of this Indenture, sell, assign or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of, any legal or beneficial ownership interest in Borrower (or in any entity, which owns, directly or indirectly, through one or more intermediate entities, any legal or beneficial ownership interest in Borrower), whether in the form of a beneficial, stock ownership, membership or partnership interest or in the form of a power of direction, control or management, or otherwise (all said encumbrances, sales, contracts, leases or other transfers described above being collectively described as a "Prohibited Transfer").

Any Prohibited Transfer made without the consent of Beneficiary, including without limitation any breach of the foregoing by a holder of any interest (legal or beneficial) or stock in Borrower shall constitute an Event of Default under Section 7.1(a) and, in addition to each and every of Beneficiary's rights and remedies under the Loan Documents for such default, Borrower shall be immediately obligated to pay Beneficiary a sum equal to one percent (1.0%) of the loan balance at the time of the Prohibited Transfer, which shall not be deemed liquidated damages or a penalty.

Beneficiary's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Beneficiary's security or whether or not it may or may not be reasonable (commercially or otherwise) for Beneficiary to consent to any Prohibited Transfer. Without limiting the foregoing, Beneficiary's consent may, if given in Beneficiary's sole unfettered discretion, be conditioned upon (by way of illustration only and not being limited to): the payment of an assumption fee, an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee or transferee, a management contract acceptable to Beneficiary with a manager acceptable to Beneficiary, an assignment to Beneficiary of any security given to Borrower in connection with the transaction, including without limitation any purchase money second mortgage and/or a change in any of the other terms and conditions of this Indenture or in any of the Loan Documents.

(b) Notwithstanding the foregoing, the initial Borrower may make a one-time sale of the Property to a purchaser without a change in loan terms, provided that (i) at least 30 days prior to the proposed transfer, Borrower must provide Beneficiary with notice of and a detailed explanation of the proposed transaction and such financial information and other documentation regarding the prospective purchaser (the "Proposed Borrower") and the Proposed Principal(s) (as defined below) as the Beneficiary shall request; (ii) Borrower shall have provided Lender with the most recent operating statements, rent rolls, and any other documentation regarding the operation of the Property as Beneficiary shall request (the "Operating Information"); (iii) Beneficiary, in the exercise of its sole unfettered discretion, shall have approved the Proposed Borrower to assume the loan evidenced by the Loan Documents, the Proposed Principal(s) and the Operating Information; (iv) the Proposed Borrower must be approved by the Franchisor, pursuant to Section 13.2.4 of the Franchise Agreement and Borrower must provide evidence of same to Beneficiary; (v) Beneficiary shall have approved (a) any manager and management agreement (and such manager and management agreement must also be approved by the Franchisor, and (b) any franchise/license agreement to be executed by the Proposed Borrower with respect to the Property; (vi) Borrower shall have provided to Beneficiary (a) a comfort letter from the Franchisor, which comfort letter shall be acceptable to Beneficiary in the exercise of its sole and unfettered discretion, (b) a subordination of any management agreement, and (c) a collateral assignment of any applicable franchise/license agreement, if required by Beneficiary; (vii) the Borrower, the Principal, the Proposed Borrower and such individuals, as required by Beneficiary (the "Proposed Principal(s)"), must execute assumption documentation, in form and content acceptable to Beneficiary, by which the Proposed Borrower shall assume the obligations of the Borrower under the Loan Documents, and by which the Proposed Principal(s) shall assume the obligations of the Principals under the Loan Documents, and without limiting the foregoing, the Proposed Borrower and Proposed Principal(s) must execute an environmental indemnification, guaranties, and such other documents as Beneficiary shall require to accomplish the assumption of the loan evidenced and secured by the Loan Documents; (viii) the Proposed Borrower or Borrower, at their expense, must cause the Beneficiary's mortgagee's title insurance policy to be endorsed showing no adverse change in title to the Property, in connection with said assumption; (ix) Beneficiary must be paid an assumption fee (the "Assumption Fee") in the amount of one percent (1%) of the outstanding loan balance at the time of approval of assumption or closing, at Beneficiary's option; (x) no Event of Default exists under any of the Loan Documents and no event has occurred which with the passage of time or the giving of notice or both could become an Event of Default; and (xi) the Borrower and/or the Proposed Borrower must pay to Beneficiary all of the Beneficiary's costs and expenses incurred in connection with the one-time sale of the Property and assumption of the loan evidenced and secured by the Loan Documents, including, without limitation, title insurance premiums, recording fees, and reasonable attorneys' fees of both outside and in-house counsel.

Nothing contained herein shall be construed to require Beneficiary to approve any Proposed Borrower or Proposed Principal(s) or to release Borrower, any guarantor or the Principal (as defined in Paragraph 4.5(c) below) from any obligations under the Loan Documents, any guaranty or environmental indemnity agreement.

(c) Further, provided no Event of Default exists under any of the Loan Documents and no event has occurred which, with the passage of time or giving of notice, or both, could become an Event of Default, a Transfer (as defined below in this Paragraph 4.5(c)) may be made of ownership interests held Kevin S. Garn (referred to as "Principal") in (i)

Borrower, or (ii) any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower, to (A) a Family Member (as defined below) of the Principal, or (B) a trust established for the benefit of the Principal and/or Family Member(s) of the Principal; provided, however, that (I) any such Transfer of an ownership interest shall not cause a change in management or Control (as defined below) of Borrower (or of any entity which controls the Borrower) and after any such Transfer, the Principal shall maintain the same right and ability to manage and Control the Borrower (or such other entity) as existed prior to the Transfer, (II) any such Transfer must be made in strict compliance with the terms and conditions of the Franchise Agreement and not result in a violation of or default under the Franchise Agreement, (III) such Transfer must not be to a person who appears on any SDN List (as defined in Paragraph 4.19. below), and (IV) Beneficiary shall be provided with written notice of any such Transfer no later than fifteen (15) days prior to the date of the Transfer and prior to the date of Transfer the transferor and transferee shall execute and deliver to Beneficiary such documents as are required by the Beneficiary. "Transfer" shall mean any change (whether one or more) in the direct or indirect ownership interests of an entity or other ownership components of such entity. "Family Member" shall mean an adult who is a spouse, or lineal descendant of the Principal, or a spouse of such sibling or lineal descendant. Transfers to minors, who but for their minority would fall within the definition of Family Member, shall not be permitted unless the transfer is to a trust or custodian under the Uniform Gifts to Minors Act or similar custodial law. "Control" shall mean the power or authority, directly or indirectly through one or more intermediaries, through the ownership of voting ownership interests, by contract or otherwise, to direct the management, activities and policies of such entity.

Provided further, and provided no Event of Default exists under any of the Loan Documents and no event has occurred which, with the passage of time or giving of notice, or both, could become an Event of Default, a Transfer (as defined in the immediately preceding subparagraph of this Paragraph 4.5(c), or multiple Transfers, of direct or indirect ownership interests in the Borrower, may be made, which Transfers, in the aggregate, must not exceed twenty-five percent (25%) of the total ownership interest in the Borrower and no such transfer shall cause a change in management or Control (as defined above in this Paragraph 4.5(c)) of the Borrower, and, as to each and every of such Transfers, the conditions set forth in subsections II, III, and IV above in this Paragraph 4.5(c) must be satisfied.

Any transfer permitted by this subparagraph 4.5(c) shall not relieve the Borrower, any guarantor or the Principal from their obligations under the Loan Documents, any guaranty or environmental indemnity agreement.

4.6. Financial Records and Statements. Borrower shall keep accurate books and records in accordance with modified GAAP accounting principles, which must be acceptable to Beneficiary, consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Beneficiary, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Beneficiary within sixty (60) days after the end of each calendar year a current occupancy statement, a statement of condition or balance sheet of Borrower relating solely to the Property as at the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy at Beneficiary's option: (a) by Borrower; or (b) in the Event of Default, by an independent certified public accountant acceptable to Beneficiary (said documents need not be audited but shall be reviewed); and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Beneficiary, and in form and substance satisfactory to Beneficiary.

Each month, Borrower shall promptly provide to Beneficiary the complete and accurate copies of the monthly/quarterly profit and loss statements reflecting the current month's/quarter's budget and corresponding year-to-date data, the current month's/quarter's occupancy report and balance sheet for the Project, together with copies of the monthly/quarterly reports, including daily rates, revenues for available rooms and the star report, as prepared by WSLM II and HMS (as defined in Paragraph 1.21., above), as the Hotel Managers, pursuant to the Management Agreement and in compliance with the Franchise Agreement, or by any replacement manager, which has been engaged to replace WSLM II and/or HMS in compliance with the terms and conditions of Paragraph 4.2(d) above.

In addition, the Borrower, as provided for herein, and its guarantors, as provided for in the guaranty, shall deliver or cause to be delivered to Beneficiary their respective balance sheets and income and expense statements under original signature within sixty (60) days after the end of each calendar year.

4.7. Further Assurances. Borrower shall promptly upon request of Beneficiary (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; or (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements, termination statements, and specified assignments of rents or leases); or (c) join with the Beneficiary in notifying any third party, who is in possession of any Personalty, of Beneficiary's security interest in such Personalty and obtaining the acknowledgment from such third party that it is holding such Personalty for the benefit of Beneficiary; or (d) cooperate with Beneficiary in obtaining control (as defined in the Uniform Commercial Code as now adopted and amended from time to time in the State) with respect to Personalty consisting of deposit accounts, letter-of-credit rights and electronic chattel paper and do such further acts, in any case as may be necessary, desirable or proper in Beneficiary's opinion to (i) carry out more effectively the purposes of the Loan Documents, (ii) protect and preserve the first and valid lien and security interest of this Indenture on the Property or to subject thereto any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto or (iii) protect the interest and security interest of Beneficiary in the Property against the rights or interests of third parties. By signing this Indenture, Borrower authorizes Beneficiary to file such financing statements, with or without the signature of Borrower, as Beneficiary may elect, as may be necessary or desirable to perfect the lien of Beneficiary's security interest in the Fixtures and Personalty. Borrower further authorizes Beneficiary to file, with or without any additional signature from Borrower, as Beneficiary may elect, such amendments and continuation statements as Beneficiary may deem necessary or desirable from time to time to perfect or continue the lien of Beneficiary's security interest in the Fixtures and Personalty. Borrower hereby expressly ratifies any financing statements that may have been filed by Beneficiary in advance of the date hereof to perfect Beneficiary's security interest in the Fixtures and Personalty.

Borrower hereby appoints Beneficiary as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

4.8. Indemnity. Borrower shall and does hereby agree to, indemnify, defend and hold harmless Trustee and Beneficiary from and against, and reimburse Trustee and Beneficiary for all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by either Trustee or Beneficiary by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Beneficiary on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents.

4.9. No Preferences. Borrower shall not repay any sums borrowed from anyone other than Beneficiary, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10. Notices. Borrower shall deliver to Beneficiary at Beneficiary's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases.

4.11. Estoppel Certificates. Borrower shall promptly furnish to Beneficiary from time to time, on the request of Beneficiary, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and



specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Beneficiary.

4.12. **Legal Existence and Place of Business.** If Borrower as an entity is executing this instrument:

(a) **Authorization; Organization.** Borrower warrants that (i) it is duly organized and validly existing, in good standing under the laws of the state of its organization, (ii) it is duly qualified to do business and is in good standing in the state of its organization and in the state where the Property is located, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents, and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of Borrower.

(b) **Dissolution; Disposition of Assets; State of Organization.** Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity, and will not change the state of its organization, without the prior express written consent of the Beneficiary except as may be otherwise provided herein.

(c) **Place of Business.** Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied it will not change its place of business, or if it has more than one place of business, it will not change its chief executive office (i.e. the place from where the Borrower manages the main part of its business operations or affairs), unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.13. **Place of Residence.** If Borrower as an individual is executing this instrument, Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents, remain unsatisfied, Borrower will not change his/her place of residence, unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change, and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.14. **Borrower Name or Identity.** Borrower shall not change its name or identity unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.15. **Defense and Notice of Actions.** Borrower shall, without liability, cost or expense to Trustee or Beneficiary, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Trustee or Beneficiary, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrancers assert title paramount to that of Borrower or Trustee or Beneficiary or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.16. **Lost Note.** Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Beneficiary, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, and that it is in substitution for the Note.

4.17. **Personalty.** Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower shall immediately notify Beneficiary in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Beneficiary, upon any acquisition of items or property constituting Personalty, Borrower shall provide Beneficiary with a current, accurate inventory of the Personalty.

4.18. **Assignment of Leases.** (a) All of the existing and future Leases are hereby absolutely and presently assigned to the Beneficiary. However, Beneficiary hereby grants to Borrower a license to collect, subject to the provisions set forth below and in the Loan Documents, the rents, royalties, income, profits and other benefits of the Property, and fees, charges, accounts and other payments for the use and occupancy of hotel rooms and other public facilities due under the Leases as they respectively come due, and to enforce the Leases so long as there is no default by Borrower in the performance of the terms, covenants or provisions of the Note, the Loan Documents or this Indenture. Upon any Event of Default by the Borrower, Beneficiary may in its discretion at any time without notice to Borrower collect the rents, royalties, income, profits and fees, charges, accounts and payments due thereunder itself or by an agent or receiver. No action taken by the Beneficiary to collect any rents, royalties, income, profits and fees, charges, accounts and other payments will make the Beneficiary a "mortgagee-in-possession" of the Property. Possession by a court-appointed receiver will not be considered possession by the Beneficiary. All rents, royalties, income, profits and fees, charges, accounts and other payments collected by the Beneficiary or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Property, and then to the payment of the indebtedness and obligations secured by this Indenture in whatever order Beneficiary directs in its absolute discretion and without regard to the adequacy of its security.

(b) Borrower will not execute any commercial leases affecting any of the Property without first having received the prior written approval from Beneficiary and Franchisor of the same. Without limiting the foregoing, any managing, leasing or similar fees shall be and are subordinated to the lien of this Indenture.

(c) Without the prior written consent of the Beneficiary, the Borrower shall not accept prepayments of rent exceeding one (1) month under any commercial lease, nor in any manner impair the Borrower's interest in the rents, royalties, income, profits and fees, charges, accounts and other payments due and payable under the Leases. The Borrower will perform all covenants of the lessor and inn-keeper under the Leases.

(d) If required by the Beneficiary, each commercial lease affecting any of the Property must provide, in a manner approved by the Beneficiary, that the commercial lease is junior and subordinate to the lien of this Indenture, and that the tenant will recognize as its lessor any person succeeding to the interest of the Borrower upon any foreclosure of this Indenture or upon deed-in-lieu of foreclosure of this Indenture.

(e) Nothing herein shall render Beneficiary liable under any existing or future Lease, regardless of the collection of rents thereunder, for any of the covenants or agreements of Borrower under such leases.

4.19. **SDN List.** An Event of Default shall exist, without notice or cure rights, if the following appear on the list of Specially Designated Nationals and Blocked Persons that is maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or on any other similar list maintained by any governmental entity or agency (collectively, the "SDN List"): (a) any Borrower; (b) any Principal (as defined in the Commitment or any Loan Document); (c) any guarantor or indemnitor; or (d) any person or entity related to any Borrower, any Principal, any guarantor, any indemnitor, the Secured Debt or the Property.

4.20. **Single Asset Borrower.** Borrower hereby represents and warrants to, and covenants with Beneficiary that as of the date hereof and until such time as the Secured Debt is paid in full:

(a) The Borrower does not engage and will not engage in any business or activity other than the ownership, operation and maintenance of the Property and activities incidental thereto, Borrower has not acquired, owned, held, leased, operated, managed,

maintained, developed or improved any assets other than the Property, and Borrower shall not acquire, own, hold, lease, operate, manage, maintain, develop, or improve any assets other than the Property;

(b) The Borrower has preserved and shall preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization and has observed and shall preserve all organizational formalities to maintain its existence as a legal entity separate and apart from its owners; and

(c) The Borrower has not and will not merge or consolidate with any other entity.

4.21. **Franchise Agreement Actions.** Without the prior written approval of the Beneficiary, which may be given or withheld in Beneficiary's sole unfettered discretion, the Borrower shall not amend, modify, replace or terminate the Franchise Agreement, or permit the Franchise Agreement to be amended, modified, replaced or terminated. The Borrower shall comply and cause the managers under the Management Agreement to comply with all terms, provisions and obligations of the Franchise Agreement and shall perform all obligations necessary to maintain the Franchise Agreement in full force and effect.

4.22. **Management Agreement Actions.** Without the prior written approval of the Beneficiary, which may be given or withheld in Beneficiary's sole unfettered discretion, the Borrower shall not amend, modify, replace or terminate the Management Agreement, or permit the Management Agreement to be amended, modified, replaced or terminated. The Borrower shall comply and cause the managers under the Management Agreement to comply with all terms, provisions and obligations of the Management Agreement and shall perform all obligations necessary to maintain the Management Agreement in full force and effect.

## 5. CASUALTIES AND TAKINGS.

5.1. **Notice to Beneficiary.** In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Beneficiary describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Beneficiary copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

5.2. **Repair and Replacement.** In case of a Casualty, the Borrower will promptly restore the Property to the equivalent of its original condition, regardless of whether insurance proceeds exist or are sufficient. In case of a Taking, the Borrower will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Beneficiary. Provided, however, upon a Casualty or Taking, if Beneficiary applies the Insurance Proceeds (defined below) or the Taking Proceeds (defined below) to the reduction of the Secured Debt, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as is practicable under the circumstances.

### 5.3. Proceeds.

(a) **Collection.** Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Beneficiary may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Beneficiary's prior written consent.

(b) **Assignment to Beneficiary.** Borrower hereby assigns, sets over and transfers to Beneficiary all Insurance Proceeds and Taking Proceeds and authorizes payments of

such Proceeds to be made directly to Beneficiary. Beneficiary may, at its sole option, apply such Proceeds to either of the following, or any combination thereof:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Beneficiary in its sole unfettered discretion, even if the proceeds in such case are in an amount less than would be available if applied to repair or replacement; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Beneficiary may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Beneficiary shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Beneficiary shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

5.4. Notwithstanding anything to the contrary which may be contained in Paragraph 5.3, and so long as (i) no default exists under the Loan Documents, (ii) the Franchise Agreement is not terminated as a result of such Casualty or Taking and continues in full force and effect, and (iii) the Franchise Agreement requires Borrower to rebuild or restore the Land and Improvements, then upon written request by Borrower to Beneficiary, Borrower shall be entitled to the Insurance Proceeds and Taking Proceeds, as the case may be, all of which are payable to Beneficiary pursuant to the terms of Paragraph 5.3, and such proceeds shall be disbursed by Beneficiary to Borrower only upon the terms and conditions hereinafter set forth:

(a) Borrower and its Principal(s) (as defined in Paragraph 4.5(c) above) must execute and deliver to Beneficiary a guaranty of payment and performance, in form and content required by the Beneficiary, in respect to the work of rebuilding and restoration of the Property.

(b) Such proceeds shall be first applied to pay all expenses incurred by Beneficiary in connection with the Casualty or Taking, including, without limitation, attorneys' fees. Proceeds remaining thereafter are referred to hereafter as "Net Proceeds."

(c) Beneficiary shall disburse the Net Proceeds to Borrower on the following terms and conditions:

(i) Prior to the first and each subsequent disbursement, Beneficiary must be satisfied that:

(1.) Beneficiary is holding a fund comprised of (a) the Net Proceeds and, if necessary, (b) additional deposits made by Borrower or tenants of the Property, which, in the reasonable judgment of Beneficiary, are sufficient to restore the Improvements on the Land to their condition immediately prior to the loss or damage, together with (c) a fund (comprised of rental /business interruption insurance proceeds or funds deposited by Borrower) sufficient to pay operating expenses, taxes, debt service on the Note and other so-called "carrying costs" of the Property during the period of repair;

(2.) after the repairs are completed, the Property will produce sufficient income to pay operating expenses, taxes, debt service on the Note and other so-called "carrying costs" of the Property;

(3.) the repairs will be conducted under the supervision of an architect, engineer and/or a general contractor selected and paid by Borrower and approved by Beneficiary;

(4.) the repairs will be performed pursuant to plans and specifications approved by Beneficiary and by a contractor selected and paid by Borrower and approved by Beneficiary;

(5.) the Property, after the repairs are completed, will be in compliance with (A) all applicable laws, ordinances, regulations and the like, and (B) the Franchise Agreement; and

(6.) no default, or occurrence which with the passage of time or the giving of notice will be a default, exists under any of the terms, covenants and conditions of the Loan Documents.

(ii) With respect to each disbursement and accompanying each request therefor, Borrower will deliver to Beneficiary:

(1.) a certificate addressed to Beneficiary executed by Borrower and by the architect, engineer or general contractor supervising the repairs, stating that such disbursement is to pay for costs of repair not paid previously by any other prior disbursement and that the amount of such disbursement does not exceed the aggregate of such costs incurred or paid on account of work, labor or services performed and material installed in or stored upon the Property at the date of such certificate; and

(2.) an endorsement to Beneficiary's mortgagee's title insurance policy, in which the making of the disbursement is recognized and the effective date of coverage is changed to the date of disbursement.

(iii) Each disbursement shall be in an amount equal to ninety percent (90%) of the costs described in the certificate referred to in Paragraph (c)(ii)(1) above. Disbursement of the final balance of the Net Proceeds, constituting not less than ten percent (10%) thereof, shall be disbursed only upon delivery to Beneficiary of the following, in addition to the foregoing:

(1.) evidence satisfactory to Beneficiary that all claims then existing for labor, services and materials enforceable by lien upon the Property have been paid in full or provision acceptable to Beneficiary has been made therefor;

(2.) a certificate of such architect or engineer or general contractor that the repairs of the Property have been completed in a good and workmanlike manner pursuant to the plans and specifications approved by Beneficiary and in accordance with all laws, rules, regulations, orders, codes and ordinances then applicable to such restoration; and

(3.) at intervals required by the Beneficiary, an estoppel certificate in form satisfactory to Beneficiary from the Franchisor.

(d) If the loss or damage is repaired pursuant to paragraph (c) above, Beneficiary shall apply any Net Proceeds in excess of the amount used for such repairs to reduction of the obligations secured hereby.

(e) If any of the foregoing conditions are not or cannot be satisfied, the provisions of this Indenture relating to disposition of Insurance Proceeds and Taking Proceeds shall again become applicable. Moreover, in such cases, Beneficiary shall have the option to make the repairs for and on Borrower's behalf and do any other act Beneficiary deems necessary and appropriate.

(f) Beneficiary shall in no event be liable for the performance or observance of any covenant or condition arising under any of the Leases in connection with the Property nor be obligated to take any action to repair or restore the Property.

(g) Notwithstanding the foregoing, the obligations of Beneficiary hereunder are subject always to the right and option of Beneficiary to apply all or any portion of the Net Proceeds to cure any default existing or arising at any time or times in the terms, covenants and conditions of the Note or other Loan Documents.

6. **LEGAL PROCEEDINGS.** Whether or not an Event of Default (as defined in Paragraph 7.1) has occurred and exists, Beneficiary shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Beneficiary's sole unfettered discretion, affect the Property, the Leases or any of the rights created by the Loan Documents.

7. **DEFAULTS; REMEDIES OF BENEFICIARY**

7.1. **Defaults; Events of Default.** Any of the following shall constitute an "Event of Default" hereunder (notice and cure periods, if and to the extent applicable to the particular Events of Default, appear in the paragraph immediately following Subparagraph 7.1(g) below):

(a) **Breach of Named Covenant.** Any breach by Borrower of the covenants in this Indenture in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.5 (Sales and Encumbrances), 4.8 (Indemnity) or under the environmental indemnity agreement of even date; or

(b) **Misrepresentations.** Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the loan application or Loan Documents or any certificate or side letter delivered in connection with the loan application or Loan Documents proves to be untrue, misleading or is not fulfilled; or

(c) **Breach of Covenant.** Any breach by Borrower of any other covenant in the Loan Documents or any covenant contained in any of the Leases or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any Lease or any certificate or side letter delivered in connection with the Loan Documents; or

(d) **Bankruptcy.** Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Beneficiary: (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor) or, if Borrower is a partnership, any general partners or joint venturer (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or is adjudged a debtor under the Bankruptcy Code or insolvent; or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(e) **Adverse Court Action.** A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of the Property, or the Property is taken on execution or by other process of law; or

(f) **Suspension.** Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents dies or terminates or suspends its business. In the case of death, however, and provided the Borrower continues its existence, the default may be cured, provided that, within ninety (90) days of the death of a general partner or any guarantor, (i) the Beneficiary, on one hand, and the decedent's personal representative, administrator or other person or entity lawfully authorized to deal with decedent's assets, the person or entity, who is to receive the decedent's interest in the Property, and any of the remaining original obligors, as applicable, on the other hand, reach written agreement as to the

assumption of the decedent's obligations upon the Loan Documents, the guaranty and the separate environmental indemnity agreement by a person or entity, who meets Beneficiary's credit, management and other criteria, as may be determined all in Beneficiary's reasonable discretion, and (ii) if such death results in the transfer of the Property or a transfer of an ownership interest in the Borrower, the terms and conditions of Paragraph 4.5 above, including, without limitation, compliance with the Franchise Agreement, must be satisfied with respect to such transfer; or

(g) Default under Franchise Agreement or Management Agreement. The occurrence of a default by Borrower under the Franchise Agreement or the Management Agreement, which remains uncured beyond express notice and cure periods, if any, under the Franchise Agreement and the Management Agreement, as applicable.

(h) Default under Contracts and Licenses. Any default by Borrower under any contracts or licenses necessary for the operation and use of the Property for the purposes set forth in the Franchise Agreement.

(i) Other Events. Any other event occurs which, under the Loan Documents, constitutes a default by the Borrower or gives the Beneficiary the right to accelerate the indebtedness secured by this Indenture.

Upon an Event of Default under Paragraph 7.1(a) above, except for a breach by Borrower under Paragraphs 4.1, 4.3 or 4.5 hereof for which Borrower shall have no notice and cure rights, Beneficiary shall give Borrower ten (10) days' written notice of such failure prior to exercising any rights or remedies it has under this Indenture or the other Loan Documents (except the right to appointment of a receiver), during which time the Borrower may cure the failure to pay. Upon any Event of Default, except under Paragraph 7.1(a), Paragraph 7.1(b), Paragraph 7.1(g), and/or Paragraph 4.19, Beneficiary shall give Borrower thirty (30) days' written notice of such default prior to exercising any rights or remedies it has under this Indenture or the other Loan Documents (except the right to appointment of a receiver), during which time the Borrower may cure the default. Provided, however, any late charge accruing during the cure period shall be due and payable as part of the cure and these cure provisions shall not affect the accrual of late charges. Upon an Event of Default under Paragraph 7.1(b), Paragraph 7.1(g) and/or Paragraph 4.19, the Borrower shall have no notice and cure right.

7.2. Remedies. In case of an Event of Default, Beneficiary may, at any time thereafter, at its continuing option and without notice except as provided in the immediately preceding paragraph, exercise any or all of the following remedies:

(a) Acceleration. Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable;

(b) Possession of Property and Receiver. Enter onto and take the Encumbered Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in Beneficiary's judgment to manage and operate the Encumbered Property, and the Beneficiary may apply any rents, royalties, income or profits collected against the obligations secured by this Indenture without in anyway curing or waiving any Event of Default as to Borrower. Without limiting the foregoing,

(i) Beneficiary shall be entitled to a receiver for the Encumbered Property and of the rents, issues and profits thereof, and shall be entitled thereto as a matter of right, including whether or not a non-judicial foreclosure has been initiated, without regard to the solvency or insolvency of the Borrower or the then owner of the Encumbered Property and, if allowed by law, without regard to the value of the Encumbered Property, and, if allowed by law, and such receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice (notice being expressly waived hereby), and all rents, issues and profits, income and revenue of and from the Encumbered Property shall be applied and accounted for as the court appointing such receiver may direct.

(ii) That if the appointment of a receiver is made before or after Trustee's or judicial sale and the Beneficiary is the successful bidder, the appointment shall

continue until the earlier of redemption from sale, as provided by statute, or issuance of a Trustee's or sheriff's deed even in the event the full indebtedness has been bid.

(iii) If for any reason Beneficiary deems a receiver necessary and if application for appointment of receiver is made after sale, Trustee or Beneficiary, if allowed by law, shall be entitled to a receiver and shall be entitled thereto as a matter of right, without regard to its bid amount or to the solvency of the Borrower or the then owner of the Encumbered Property and, if allowed by law, without regard to the value of the Encumbered Property; and such receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice (notice being expressly waived hereby), and all rents, issues and profits, income and revenue of and from the Encumbered Property shall be applied and accounted for as the court appointing such receiver may direct. It is the Borrower's intent that the Trustee or Beneficiary shall be absolutely entitled to the appointment of a receiver even after sale and that this language shall be sufficient for such appointment.

(iv) In the event redemption does not occur and subject to order of the court appointing the receiver, the Borrower shall be entitled to any excess funds held by the receiver after first paying from the rents, issues, profit, income and revenues of the Encumbered Property all court approved costs, expenses and fees of the receiver incurred in the performance of its duties and any sums owed to Beneficiary under the Note, this Indenture or any other Loan Document.

It is the Borrower's express agreement pursuant to Rule 66, Utah Rules of Civil Procedure, and any successor rule or statute, that Beneficiary shall have the rights to an appointment of a receiver as provided for herein.

(c) **Foreclosure.** Notify the Trustee of the Event of Default and direct the Trustee to record and deliver to Borrower, as provided by law, a notice of default and election to sell. After lapse of such time as may then be required by law and after notice of sale has been given as required by law, Trustee shall foreclose this Indenture and sell and dispose of the Property (in masse or in separate parcels, as said Beneficiary may think best to the fullest extent now or hereafter allowed by law), and all of the right, title and interest of the Borrower therein and thereto at public auction at the Courthouse in the County in which the Property is located, or at any other place then authorized by law, as may be specified in the notice of such sale, for the highest and best cash price the same will bring, payable in lawful money of the United States at the time of sale. Trustee shall deliver to the purchaser or purchasers thereof a Trustee's Deed conveying the property so sold, but without any warranty or covenant, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The Trustee shall, out of the proceeds or avails of such sale, after first paying and retaining all fees, charges, expenses and costs of making said sale, including an attorney's fee in the amount as hereinafter provided for, pay to the Beneficiary the then existing amount of the indebtedness, rendering the excess proceeds of said sale, if any, unto (i) the Borrower, or the successors or assigns of the Borrower; (ii) other lien claimants having an interest in the Property; or (iii) interpleading such excess proceeds in a court, having jurisdiction, for distribution. The Beneficiary may purchase the Property, or any part thereof, applying the amount owing on the Note toward the payment of the purchase price bid; it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

The Trustee upon the written direction of the Beneficiary may postpone the foreclosure sale from time to time as permitted by law.

(d) **Offset Rights.** Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Beneficiary to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4.

(e) **Cure of Default.** Without releasing Borrower from any obligation hereunder or under the Loan Documents or waiving any Event of Default, Beneficiary may cure any Event of Default. In connection therewith, Beneficiary may enter upon the Property and do such acts and things as Beneficiary deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any



encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums; (iii) paying any delinquent sums owed by Borrower under the Franchise Agreement and Management Agreement; and (iv) employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary in the foregoing. Should Beneficiary make any such payments, the amount thereof shall be secured hereby and Borrower shall reimburse Beneficiary therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid.

(f) **Uniform Commercial Code Remedies.** Exercise any and all rights of a secured party under the UCC with respect to all of the Encumbered Property which is subject to the Uniform Commercial Code and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) take possession of, assemble and collect the Personalty or render it unusable by Borrower; and

(ii) require Borrower to assemble the Personalty and make it available at any place Beneficiary may designate so as to allow Beneficiary to take possession or dispose of the Personalty.

Written notice mailed to Borrower, as provided herein, fifteen (15) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner. In the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Personalty and the other parts of the Property may, at the option of Beneficiary, be sold in parts or as a whole. If allowed by law, the Personalty and the Property may be sold together by decree of Trustee under the power of sale granted hereby (which power of sale does and shall be deemed to apply to both the Personalty and the Property) or by a decree of the court in any judicial sale. It shall not be necessary that Beneficiary take possession of the Personalty prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personalty be present at the location of such sale.

A CARBON, PHOTOGRAPH OR OTHER REPRODUCTION OF THIS INDENTURE OR ANY FINANCING STATEMENT RELATING TO THIS INDENTURE SHALL BE SUFFICIENT AS A FINANCING STATEMENT. THIS INDENTURE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF BENEFICIARY AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF.

(g) **Judicial Actions.** Commence and maintain an action or actions in any court of competent jurisdiction at law or in equity to foreclose this Indenture as a mortgage pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. Borrower agrees that any one action shall not abate or be a bar to or waiver of Beneficiary's right to institute or maintain any other, provided that Beneficiary shall have only one payment and satisfaction of the Secured Debt.

(h) **Other Sale.** Cause any or all of the Property to be sold in any manner permitted by applicable law.

(i) **Subrogation.** Have and exercise all rights and remedies of any person, entity or body politic to whom Beneficiary renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds

heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record.

(j) Comfort Letter Remedies. Exercise any and all rights set forth in the Comfort Letter issued by the Franchisor to the Beneficiary with respect to the Franchise Agreement.

(k) Other. Exercise any other right or remedy available under Laws or in equity, or under the Loan Documents. Take such other actions or commence such other proceedings as Beneficiary deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws. In the case of the occurrence of an Event of Default under Section 4.19 hereof, Beneficiary shall have the right to take any and all action or to make any report or notification required by OFAC or any other applicable governmental entity or agency or by the Laws relating to the SDN list.

Any sums advanced or expenses incurred by Beneficiary under this Paragraph 7.2, including but not limited to reasonable attorneys' fees (both outside and in-house counsel), costs and other expenses, shall bear interest at the After-Maturity Rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt.

### 7.3. General Provisions.

(a) Multiple Sales. Several sales may be made pursuant to Paragraph 7.2 without exhausting Beneficiary's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power of sale or power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 7.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.

(b) Cumulative Remedies. All of the rights, remedies and options set forth in Paragraph 7.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Beneficiary.

(c) Right to Purchase. At any sale or sales of the Property pursuant to Paragraph 7.2, Beneficiary shall have the right to purchase the Property being sold, and in such cases the right to credit the amount of the bid made therefor (to the extent necessary to satisfy such bid) against the amount of the Secured Debt then due.

(d) Right to Termination Proceedings. Beneficiary may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 7.2, terminate, without prejudice to Beneficiary, such proceedings or actions.

(e) No Waiver or Release. Beneficiary may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Beneficiary in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Beneficiary to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Beneficiary and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Beneficiary to Borrower or any other person or entity, shall operate to release or in any manner affect Beneficiary's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) Waivers and Agreements Regarding Remedies. To the full extent Borrower may do so, Borrower hereby:

(i) agrees that Beneficiary may in its discretion sell all the Personalty and Realty together or in parts, in one or more sales, and in any sequence Beneficiary selects. It is the specific intent of Borrower and Beneficiary that Beneficiary, at its option, may cause the Encumbered Property to be sold in a single sale. The Trustee, or the Court if by judicial sale, is hereby authorized, upon the election of Beneficiary, to conduct or order a sale of both the items of Personalty and Realty. The Beneficiary's rights hereunder or under any of the other Loan Documents may be enforced alternatively, successively or cumulatively;

(ii) waives all rights and claims Borrower may now have as a Homestead Exemption or which may be hereafter acquired and to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the Homestead Exemption, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Beneficiary to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Beneficiary's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Beneficiary's action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) to the extent allowed by law, waives the defense of laches and any applicable statutes of limitation.

(g) **Beneficiary's Discretion.** Beneficiary may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion. Without limiting the foregoing and by way of amplification, with respect to any right or remedy available to Beneficiary under this Indenture, the Note and the other Loan Documents which arises upon or may be exercised at any time after the occurrence of a default or an Event of Default, or with respect to the Beneficiary's determination as to whether a circumstance or event constitutes a default or Event of Default under the Loan Documents, Beneficiary and Borrower agree that the provisions of this Indenture, the Note and the other Loan Documents shall be strictly construed as written to afford the Beneficiary the full benefit of all such provisions. Beneficiary and Borrower intend with respect to such matters that Beneficiary shall be entitled to exercise Beneficiary's choices relating to the enforcement of any rights or remedies following a default or Event of Default in Beneficiary's sole discretion and solely with regard to Beneficiary's subjective determination of what is in the best interests of Beneficiary and without regard to the reasonableness or not of such right or remedy as it might affect the Borrower. Borrower acknowledges that it has adequate protections regarding defaults based upon notice provisions and rights to cure expressly stated in this Indenture, the Note and pursuant to applicable statutes.

(h) **Sales.** In the event of a sale or other disposition of the Property pursuant to Section 7.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided.

(i) **Attorneys' Fees and Costs.** In the event foreclosure be made by Trustee under the power of sale granted under this Indenture, reasonable attorney's, legal clerks and assistants and paralegal fees shall be allowed as part of the cost of foreclosure, but in the event foreclosure proceedings be made through the courts, attorney's, legal clerks and assistants and paralegal fees in an amount determined by the courts to be reasonable shall be taxed by the court as a part of the costs of such foreclosure proceedings. In addition to such attorney's and other fees, Beneficiary shall be awarded (and Borrower shall pay) all costs and expenses incurred in connection with the collection and satisfaction of the Secured Debt or otherwise evidenced or secured by the Loan Documents, and in supervision, administration, preservation, protection of and realization upon the Encumbered Property, or any other security, including without limitation, court costs, appraisal fees, survey costs, environmental inspection fees and costs, property management and receiver's fees and costs, and expert fees and costs of every nature, interest on funds advanced by Beneficiary, and other costs incurred by Beneficiary, whether incurred with or without or in any connection with litigation, judicial or non-judicial foreclosure, appeals, bankruptcy proceedings, and any other judicial or non-judicial proceeding.

(j) **License and Permits.** Borrower shall cooperate with Beneficiary to (i) facilitate the orderly transfer to the fullest extent permitted by applicable laws to Beneficiary or its designee of all Licenses and Permits, including, without limitation, business, liquor and restaurant licenses and permits in respect to the Property, and (ii) enable the continued operation of the Property as a hotel and the continued provision of alcoholic beverages and food and operation of liquor and food services at the Property without interruption, in each case, until such time as Beneficiary or its designee shall have obtained such Licenses and Permits. If any other party is the holder of such licenses or permits in respect to the Property, either as of the date hereof or subsequent to the date hereof, Borrower shall cause such party to deliver to Beneficiary in writing an agreement to abide by the foregoing.

## 8. POSSESSION AND DEFEASANCE.

8.1. **Possession.** Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

8.2. **Defeasance.** If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Beneficiary shall release or cause to be released, such liens, grants, assignments, conveyances and security interest in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, such an instrument may describe the grantee as "the person or persons legally entitled thereto." Beneficiary shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

## 9. GENERAL.

9.1. **Beneficiary's Right to Waive, Consent or Release.** Beneficiary may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest

therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Beneficiary, except to the extent specifically agreed to by Beneficiary in such writing.

9.2. **No Impairment.** The interests and rights of Beneficiary under the Loan Documents shall not be impaired by any indulgence, including, without limitation, (a) any renewal, extension or modification which Beneficiary may grant with respect to any of the Secured Debt, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant in respect of the Property or any interest therein, or (c) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.

9.3. **Amendments.** THE LOAN DOCUMENTS, AS WRITTEN, REPRESENT AND ARE THE FINAL EXPRESSION OF AGREEMENT BETWEEN THE BENEFICIARY AND THE BORROWER AND BORROWER'S GUARANTORS AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Beneficiary, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

9.4. **No Usury.** Any provision contained in any of the Loan Documents notwithstanding, Beneficiary shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 9.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control. Borrower's and Beneficiary's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

9.5. **Notices.** Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable notice address set forth in the cover sheet of this Indenture, or to such different address as either Borrower or Beneficiary shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, in the case of delivery by certified United States Mail, two (2) days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

9.6. **Successors and Assigns.** Without in any way limiting or affecting the due on sale and encumbrance provisions of this Indenture, the terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Beneficiary and its successors, substitutes and assigns and Trustee and its successors and assigns in trust, and shall constitute covenants running with the Land. All references in this Indenture to Borrower, Beneficiary or Trustee shall be deemed to include all such successors, substitutes and assigns.

If, in contravention of the provisions of this Indenture or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Beneficiary may, without notice to Borrower, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Beneficiary's remedies under or Borrower's liability under the Loan Documents or on the Secured Debt.

9.7. **Severability.** A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

9.8. **Gender and Construction.** Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. In this Indenture (i) the term "Beneficiary" shall mean the owner and holder, including pledgees, of the Note hereby secured, whether or not named as Beneficiary herein; (ii) either of the words "costs" or "expenses" shall include, but shall not be limited to, the cost of title evidence and reasonable fees of the attorneys of choice (both outside and in-house counsel) for Beneficiary or Trustee; (iii) the enumeration of certain particulars as included within general language shall not restrict the scope or affect the generality of such language; and (iv) the term "Borrower" shall mean the original signature(s) hereof, the successors and assigns thereof and any future owners of the Property described herein or any part thereof. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Beneficiary, it shall permit Beneficiary to evaluate such criteria as it chooses in approving or disapproving the requested or pending action.

9.9. **Joint and Several Liability.** If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.

9.10. **Modifications.** References to any of the Loan Documents in this Indenture shall be deemed to include all amendments, modifications, extensions and renewals thereof.

9.11. **Governing Laws.** This Indenture shall be construed according to and governed by the laws of the State, except to the extent, if at all, provided otherwise in the definition of UCC, set forth in Paragraph 1.35 above.

9.12. **Captions.** All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provisions herein.

9.13. **Acknowledgment of Receipt.** Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

9.14. **Hazardous Waste.** Except to the extent set forth, if at all, in that certain Phase I Environmental Site Assessment, prepared by AEI Consultants, dated July 14, 2020, Borrower covenants, represents, and warrants that to the best of its knowledge, (a) no toxic or hazardous substances, including without limitation asbestos and the group of organic compounds known as polychlorinated biphenyls, have been or shall be generated, treated, stored or disposed of, or otherwise deposited in or located on the Property, including without limitation the surface and subsurface waters of the Property, except in compliance with applicable law; (b) no activity has been or shall be undertaken on the Property which would cause (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, as amended from time to time, or any similar State law or local ordinance, (ii) a release or threatened release of hazardous waste from the Property within the meaning of, or otherwise bring the Property within the ambit of, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, as amended from time to time, including, without limitation, by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, *et seq.*, as amended from time to time, or any similar State law or local ordinance or any other environmental law, or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as amended from time to time, the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, as amended from time to time, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, as amended from time

to time, or the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended from time to time, or any similar State law or local ordinance; (c) there are and shall be no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, SARA, or any other federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements; and (d) there are and shall be no underground storage tanks or underground deposits located on the Property.

The covenants, representations, or warranties of the Borrower contained in this Paragraph 9.14 and other environmental provisions of the Loan Documents are hereinafter each defined as an "Environmental Provision". Beneficiary or its agents, representatives, and employees may seek an injunction to cause Borrower to abate any action in violation of any Environmental Provision and may seek the recovery of all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out of pocket costs or expenses actually incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action required by any hazardous materials law, or any hazardous materials related claim, or which Beneficiary believes necessary to protect the Encumbered Property. It will be conclusively presumed between Beneficiary and Borrower that all expenses incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action of or to the Encumbered Property were made by Beneficiary in good faith. All expenses incurred by Beneficiary under this subsection (including, without limitation, court costs, consultant fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the After-Maturity Rate set forth in the Note. Beneficiary will be entitled to bid, at any trustee's or foreclosure sale of the Encumbered Property, the amount of such expenses in addition to the amount of other indebtedness.

To the extent permitted by applicable law and including, without limitation, §78B-6-909 of the Utah Code Annotated ("U.C.A."), Beneficiary or its agents, representatives, and employees may waive its lien against the Encumbered Property or any portion of it, including the Improvements and the Personalty, to the extent that the Encumbered Property is found to be environmentally impaired and to exercise all rights and remedies of an unsecured creditor against Borrower and all of Borrower's assets and property for the recovery of any deficiency and environmental costs, including, but not limited to, any other rights and remedies permitted by law.

9.15. **Conflict.** The terms of this Indenture, to the degree applicable, shall modify and amend any agreements between Borrower, its members, its managers, and any third parties, or any of them, related to the Encumbered Property. In the event of any conflict between this Indenture and any such other agreement, this Indenture shall control. The Borrower, its members, its managers, and guarantors, individually subordinate to Beneficiary's rights under this Indenture and the other Loan Documents any claims, demands, rights or interests they may now or hereafter have in the Encumbered Property except as created herein.

9.16. **After-Acquired Title.** The conveyance of the Encumbered Property to Trustee and Beneficiary contained herein shall be effective to convey any after-acquired title which Borrower may obtain in the Encumbered Property.

9.17. **Survival.** All provisions, covenants and promises of Borrower contained or incorporated herein shall survive foreclosure sale whether or not the full indebtedness has been bid. Without limiting the foregoing and by way of specification only, Borrower shall remain liable to Beneficiary for any sums advanced by Beneficiary for obligations owed to Beneficiary by Borrower whether advanced before or after foreclosure sale or after issuance of deed; provided that, in the case of a full indebtedness bid, such sums advanced have not been included in the indebtedness upon which a full indebtedness bid is made.

9.18. **Exhibits.** The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

Exhibit A - Property Description

Exhibit B - Permitted Exceptions

9.19. Counterparts. This Indenture may be executed in any number of counterparts and by different parties in separate counterparts, each of which when executed and delivered will be deemed an original, and all counterparts taken together will constitute one and the same document.

## 10. CONCERNING TRUSTEE.

10.1. Trustee's Covenants. Trustee, by Trustee's acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by it in accordance with the terms hereof.

10.2. Resignation of Trustee. Trustee may resign at any time upon giving thirty (30) days' notice in writing to Borrower and to Beneficiary.

10.3. Substitution of Trustee. In the event of the death, removal, resignation, refusal to act, or the inability to act of Trustee or in Beneficiary's sole unfettered discretion for any reason whatsoever, Beneficiary may, at any time or from time to time without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor Trustee, and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor without conveyance from the predecessor Trustee. Neither Trustee nor any substitute Trustee shall be required to give bond for the faithful performance of its duties unless required by Beneficiary. Such substitute Trustee shall be appointed by written instrument duly recorded in the county where the Realty is located, which appointment may be executed by an authorized agent of Beneficiary and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the Board of Directors and any superior officer of Beneficiary. Borrower hereby ratifies and confirms any and all acts which the herein-named Trustee, or its successors or assigns in this trust, shall do lawfully by virtue hereof. Borrower hereby agrees, on behalf of itself and of its heirs, executors, administrators and assigns, that the recitals contained in any deed or deeds executed in due form by Trustee or any substitute Trustee, acting under the provisions of this Indenture, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby.

10.4. Reconveyance and Agreements. At any time, or from time to time, without liability therefor, upon written request of Beneficiary and presentation of this Indenture and the Note or notes secured hereby for endorsement, and without affecting the personal liability of any person for the payment of the Secured Debt or the effect of this Indenture upon the remainder of the Property, Trustee may reconvey any part of the Property, consent in writing to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

10.5. Release of Lien. Upon written request of Beneficiary stating that the Secured Debt has been paid and upon surrender to Trustee of this Indenture and the Note or notes secured hereby for cancellation and retention and payment of Trustee's fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

10.6. Exculpation and Indemnification of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by Trustee in good faith to be genuine. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law), and Trustee shall be under no liability for interest on any monies received by it hereunder (except to the extent required by law). Borrower will reimburse Trustee for, and indemnify, save harmless



and defend Trustee against, any and all liability and expense (including, without limitation, attorneys' fees and expenses) which Trustee may incur in performance of its duties under the Loan Documents.

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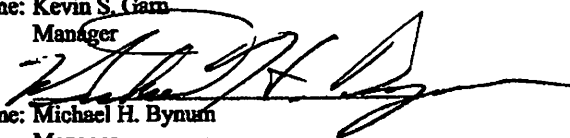
IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal as of the 14<sup>th</sup> day of September, 2020.

**BORROWER:**

HOTEL MOAB LLC, a Utah limited liability company

By: \_\_\_\_\_  
Name: Kevin S. Garn

Its: Manager

By:   
Name: Michael H. Bynum

Its: Manager

By: \_\_\_\_\_  
Name: David Webster, Jr.

Its: Manager

STATE OF UTAH )  
 )  
COUNTY OF \_\_\_\_\_ )

ss.

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Kevin S. Garn, as Manager, of Hotel Moab LLC a Utah limited liability company.

**WITNESS MY HAND AND OFFICIAL SEAL.**

My commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

Notary Public

(SEAL)

STATE OF UTAH )  
 )  
COUNTY OF Grand )

ss.

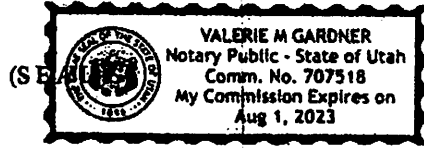
The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of September, 2020, by Michael H. Bynum, as Manager, of Hotel Moab LLC a Utah limited liability company.

**WITNESS MY HAND AND OFFICIAL SEAL.**

My commission expires: 8-1-2023

Residing at: Moab, UT

Valerie M. Gardner  
Notary Public



IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal as of the 16th day of September, 2020.

**BORROWER:**

HOTEL MOAB LLC, a Utah limited liability company

By: [Signature]  
Name: Kevin S. Garn  
Its: Manager

By: \_\_\_\_\_  
Name: Michael H. Bynum  
Its: Manager

By: \_\_\_\_\_  
Name: David Webster, Jr.  
Its: Manager

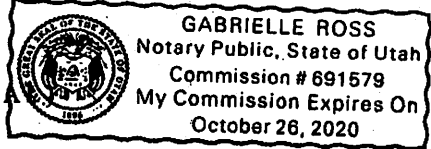
STATE OF UTAH )  
 ) ss.  
COUNTY OF Davis )

The foregoing instrument was acknowledged before me this 16 day of September, 2020, by Kevin S. Garn, as Manager, of Hotel Moab LLC a Utah limited liability company.

**WITNESS MY HAND AND OFFICIAL SEAL.**

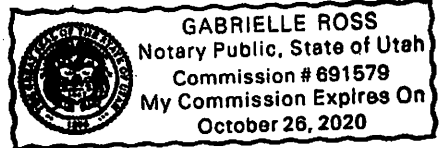
My commission expires: 10/26/2020

Residing at: Layton, UT



[Signature]  
Notary Public

STATE OF UTAH )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )



The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Michael H. Bynum, as Manager, of Hotel Moab LLC a Utah limited liability company.

**WITNESS MY HAND AND OFFICIAL SEAL.**

My commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal as of the 5th day of September, 2020.

**BORROWER:**

**HOTEL MOAB LLC, a Utah limited liability company**

By: \_\_\_\_\_  
Name: **Kevin S. Garn**  
Its: **Manager**

By: \_\_\_\_\_  
Name: **Michael H. Bynum**  
Its: **Manager**

By: *David Webster Jr*  
Name: **David Webster, Jr.**  
Its: **Manager**

STATE OF UTAH )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Kevin S. Garn, as Manager, of Hotel Moab LLC a Utah limited liability company.

**WITNESS MY HAND AND OFFICIAL SEAL.**

My commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

STATE OF UTAH )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020, by Michael H. Bynum, as Manager, of Hotel Moab LLC a Utah limited liability company.

**WITNESS MY HAND AND OFFICIAL SEAL.**

My commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

STATE OF UTAH )

COUNTY OF Salt Lake )

ss.

The foregoing instrument was acknowledged before me this 15 day of September, 2020, by David Webster, Jr., as Manager, of Hotel Moab LLC a Utah limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

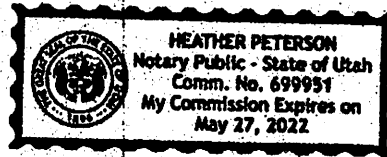
May 27, 2022

Residing at:

Salt Lake County

Heather Peterson  
Notary Public

(SEAL)



Ent 538613 Bk 904 Pg 249

**EXHIBIT A**

**(Legal Description)**

**PARCEL 1:**

Beginning at a corner on the West right-of-way of 100 West Street, said corner bears North 189.1 feet; thence West 48.4 feet from the centerline monument at the intersection of 100 West and 100 North Streets, said point by record bears West 266.1 feet; thence South 1486.6 feet from the North quarter corner of Section 1, Township 26 South, Range 21 East, Salt Lake Meridian and proceeding thence with the West right of way of 100 West Street South 00°21' West 457.30 feet to a corner; thence North 85°27' West 147.70 feet to a corner; thence North 80°08' West 16.9 feet to a corner; thence North 87°53' West 33.5 feet to a corner; thence South 76°45' West 4.8 feet to a corner; thence North 79°08' West 9.0 feet to a corner; thence along the arc of a 1292.5 foot radius curve to the right 57.7 feet (described as 57.2 feet in some instruments of record) (said curve has a chord which bears North 80°23' West 57.7 feet) to a corner; thence North 83°01' East 54.70 feet to a corner; thence North 22°23' East 20.5 feet to a corner; thence North 00°08' West 58.7 feet to a corner; thence along a fence line South 88°43' West 244.6 feet to a corner; thence North 52°27' East 80.6 feet to a corner; thence North 08°13' East 77.4 feet to a corner; thence North 00°34' West 229.2 feet to a corner; thence along a fence line South 89°38' East 210.1 feet; thence along a fence line North 89°33' East 87.8 feet to a corner on the West line of Manzaneres; thence South 9.0 feet to the Southwest corner of Manzaneres; thence North 89°26' East 103.9 feet to the point of beginning.

LESS any portion within 100 West Street and/or Williams Way.

**PARCEL 2:**

Beginning at a point which bears South 1815.2 feet and West 480.4 feet from the North quarter corner of Section 1, Township 26 South, Range 21 East, Salt Lake Meridian and proceeding thence South 00°12' East 58.9 feet; thence South 22°19' West 20.5 feet; thence South 82°57' West 54.7 feet to the North right-of-way of Williams Way; thence with said right-of-way with a curve to the left 148.53 feet, the chord of which bears North 84°59' West 148.53 feet; thence North 88°14' West 4.2 feet; thence with curve to the right 108.3 feet, the chord of which bears North 79°55' West 108.3 feet; thence North 82°06' West 28.5 feet to the South line of Davis tract; thence with said tract South 88°06' East 26 feet; thence North 52°23' East 88.8 feet; thence North 88°43' East 244.6 feet to the point of beginning.

**PARCEL 3:**

The nonexclusive easements for access and parking as created by and defined in that certain Easement Agreement (Access Drive and Parking Area) recorded ~~Sept 17, 2020~~ as Entry No. 538613 ID in Book 904 at Page 250 in the office of the County Recorder of Grand County, Utah, in and to the following described property:

Beginning at a point on the Grantor's boundary, said point being South 1815.20 feet and West 480.40 feet and South 88°43'00" West 244.60 feet and North 52°27'00" East 15.29 feet from the North quarter corner of Section 1, Township 26 South, Range 21 East, Salt Lake Base and Meridian, and proceeding thence along a line being parallel and three feet behind existing parking curbing North 01°04'47" West 23.28 feet; thence with said curbing North 83°34'44" East 9.02 feet; thence North 00°29'31" West 53.02 feet; thence with a curve having a radius of 37.76 feet, to the right with an arc length of 32.89 feet, (a chord bearing of North 19°13'58" East 31.67 feet); thence North 44°03'33" East 23.83 feet; thence North 45°56'27" West 17.68 feet; thence North 44°58'51" East 34.09 feet to a point on Grantor's boundary; thence with said boundary South 00°34'00" East 56.41 feet; thence South 08°13'00" West 77.40 feet; thence South 52°27'00" West 45.40 feet to the point of beginning.

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**EXHIBIT B**

**(Permitted Exceptions)**

1. Intentionally deleted by Title Company.
2. Intentionally deleted by Title Company.
3. Intentionally deleted by Title Company.
4. Intentionally deleted by Title Company.
5. Intentionally deleted by Title Company.
6. Intentionally deleted by Title Company.
7. Intentionally deleted by Title Company.
8. Intentionally deleted by Title Company.
9. Taxes for the year 2020 are accruing as a lien not yet due and payable under Parcel No. 01-0001-0148. (affects Parcel 1)
10. Taxes for the year 2020 are accruing as a lien not yet due and payable under Parcel No. 01-0001-0127. (affects Parcel 2)
11. The herein described Land is located within the boundaries of Moab City, Moab Mosquito Abatement District, Grand County Cemetery Maintenance District, Moab Valley Fire Protection District, Grand County Water Conservancy District, Grand County Special Service Water District, Grand County Hospital Service District, Grand County Recreation Service District No. 1, Solid Waste Special Service District No. 1; Grand County Multi-Purpose Special Service District No. 1, and is subject to any and all charges and assessments levied thereunder.

NOTE: None due and payable at Date of Policy.

12. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed herein. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
13. Claim, right, title or interest to water or water rights whether or not shown by the Public Records.
14. Notice of Prescriptive Easement in favor of The Moab Irrigation Company for the right to inspect, maintain, operate, repair, protect, remove, and replace pipelines, valve boxes, and other associated structures and appurtenances and incidental purposes, by instrument recorded June 3, 2015, as Entry No. 508949, in Book 818, at Page 661. (affects Parcels 1, 2 and 3)  
  
Notice of Prescriptive Easement Description Correction recorded February 17, 2016 as Entry No. 510904 in Book 828 at Page 970. (affects Parcels 1, 2 and 3)
15. Grant of Permanent Irrigation Easement in favor of Moab Irrigation Company for a 15 foot wide irrigation line easement and incidental purposes, by instrument recorded June 28, 2016, as Entry No. 512330, in Book 831, at Page 788. (affects Parcels 1, 2 and 3)
16. Right of Way Easement in favor of Rocky Mountain Power, an unincorporated division of PacifiCorp its successors and assigns to construct, reconstruct, operate, maintain and repair electric transmission and other equipment and incidental purposes, over, under and across a portion of the subject Land. Said Easement recorded August 27, 2016, as Entry No. 530738, in Book 872, at Page 405. (affects Parcel 1)
17. Grant of Permanent Irrigation Easement in favor of Moab Irrigation Company, by instrument recorded September 27, 2018, as Entry No. 531583, in Book 874, at Page 108. (NOTE: The description appears to be erroneous)

Surveyor's Affidavit to correct the description shown in the above instrument, recorded Sept. 18, 2020 as Entry No. 531600 in Book 904 at Page 133.

18. Intentionally deleted by Title Company.
19. Intentionally deleted by Title Company.

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20. Intentionally deleted by Title Company.
21. Intentionally deleted by Title Company.
22. Intentionally deleted by Title Company and moved to Schedule B-11, Paragraph 3.
23. Intentionally deleted by Title Company and moved to Schedule B-11, Paragraph 4.
24. Intentionally deleted by Title Company.
25. Intentionally deleted by Title Company.
26. Intentionally deleted by Title Company.
27. The following rights and reservations set forth in the Patent recorded June 29, 1916 as Entry No. 181937 in Book 3-C at Page 118:  
  
Any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the rights of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. (affects Parcels 1, 2 and 3)
28. The terms, conditions, and any easements and/or rights-of-way for a water conservation project, water distribution system, and any appurtenances of the Utah Water and Power Board, the Moab Irrigation Company, a corporation organized and existing under the laws of the State of Utah, and/or parties claiming by, through or under them, as the same may be found to intersect the Land, pursuant to that certain Agreement recorded April 27, 1984 as Entry No. 303158 in Book 121 at Page 531.  
  
The effects of that certain Deed executed by Moab Irrigation Company as Grantor, to the Utah Water and Power Board, Grantee, and recorded April 27, 1984 as Entry No. 303181 in Book 121 at Page 537. (affects Parcels 1, 2 and 3)
29. Intentionally deleted by Title Company.
30. Intentionally deleted by Title Company.
31. Intentionally deleted by Title Company.
32. Subject to the following matters disclosed on that certain survey prepared by Red Desert Land Surveying under the date of August 3, 2020, last revision dated September 1, 2020, as Job No. 105-20, by Lucas Blake, a Professional Land Surveyor holding License No. 7640504:
  - a. Existing utilities, including, but not limited to, sanitary sewer manhole; storm drain inlet and cleanout; gas meter; and water manhole located on and across the Land without dedicated easements and any prescriptive easement rights associated with the same.
  - b. Existing fences not located on boundary lines in the Northerly portion of Parcel 1.
  - c. Encroachment of existing driveway and parking improvements onto land adjacent to the West of the Land.
  - d. The apparent encroachment of landscaping, curbing, ground lights, sidewalks and planter boxes associated with the Land onto adjoining land along the Easterly, Southeastery and Southerly portions of Parcel 1.

The above will be supplemented to include any additional matters that might be disclosed by the final, signed and certified version of said survey which must be provided to the Company prior to issuance of the policy of title insurance contemplated hereunder.

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33. Taxes for the year 2020 are accruing as a lien not yet due and payable under Parcel No. 01-0001-0158. (affects Parcel 3)
34. Intentionally deleted by Title Company.
35. Intentionally deleted by Title Company.
36. Intentionally deleted by Title Company.
37. Intentionally deleted by Title Company.
38. Intentionally deleted by Title Company.
39. Intentionally deleted by Title Company.
40. Intentionally deleted by Title Company.
41. Easement Agreement (Access Drive and Parking Area) dated 9/18, 2020, executed by and between Hotel Moab II, LLC, a Utah limited liability company (Grantor), and Hotel Moab LLC, a Utah limited liability company (Grantee), and recorded 9/18, 2020 as Entry No. 538610 in Book 538610 at Page 162.

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