

WHEN RECORDED, MAIL TO:  
SIX COUNTY ECONOMIC DEVELOPMENT DISTRICT  
c/o Mountain West Small Business Finance  
2595 East 3300 South  
Salt Lake City, Utah 84109

Ent 156320 Bk 244 Pg 713  
Date: 10-JUN-2019 4:24:07PM  
Fee: \$40.00 Check Filed By: CA  
COLLEEN ALLEN, Recorder  
WAYNE COUNTY  
For: BACKMAN TITLE SERVICES

BTC: 9-002360  
Parcel # 02-0039-0889

For recorder's use only

## THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY SIX COUNTY AGREEMENT (Agreement) is entered into this  
May 16, 2019, by the following parties:

SIX COUNTY ECONOMIC DEVELOPMENT DISTRICT ("Six County), whose address for notice purposes is:

c/o Mountain West Small Business Finance  
2595 East 3300 South  
Salt Lake City, Utah 84109

AMERICAN UNITED FEDERAL CREDIT UNION ("Bank"), whose address for notice purposes is:  
2687 West 7800 South  
West Jordan, UT 84088

### RECITALS

1. The Bank will provide permanent financing (Bank Loan), and Six County will provide a loan to the company or companies identified below as Borrower, ("Borrower") for purposes of financing the Project contemplated by the loan agreement ("Loan Agreement") between Six County and Borrower, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A which is attached to this Agreement (Project Property):

Six County Loan # 137  
Six County Loan Name: RED SANDS HOTEL  
Six County Loan Amount: \$212,000.00  
Borrower: 670 TORREY LLC  
Bank Loan Amount: \$4,470,000.00  
Term of Bank Loan: 10 years  
Project Property Address  
Street address: 670 East Highway 24

City, State, Zip code: Torrey, UT 84775  
Attach Legal description as Exhibit A

2. The parties have required the Borrower to grant liens or security interests in the Project Property to secure the separate loans advanced by the parties (Common Collateral), and the lien or security interest held by Six County (Six County Lien) will be junior and subordinate to the lien or security interest held by the Bank (Bank Lien).

#### TERMS AND CONDITIONS

In consideration of the above factual recitals, the mutual agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Amount of Bank Loan. The Bank Loan is fully advanced and does not exceed the amount stated above.

2. Subordination of Six County Loan. Six County agrees to make the Six County Loan to the Borrower and accept a junior and subordinate position in the Common Collateral upon the condition that Bank executes this Agreement and makes the Bank Loan.

3. Accurate Information. The Bank warrants and represents that all information provided to Six County, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Bank has not withheld any material information.

4. Waiver of Provision Certain Bank Document Provisions. If Bank's documents evidencing the Bank Loan and Bank Lien contain provisions that prohibit further encumbrances on the Common Collateral or subordinate debt by the Borrower or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral, then Bank waives its right to enforce such provisions as they may apply to the Six County Loan and Six County Lien. Furthermore:

a. No Open-Ended Features and No Future Advances. The Bank Loan is not open-ended. Bank agrees that it will not make any future advances to Borrower on the Third Party Loan, provided, however, that Bank may make reasonable advances against the balance owed on the loan for the purposes of collection of amounts due, maintenance of collateral, and protection of the Bank Lien.

b. No Early Call or Demand Provisions. Bank agrees that either (i) Bank's documents evidencing the Bank Loan and the Bank Lien do not contain an early call feature, or any provision which allows Bank to make demand under the Bank Loan (other than when such loan is in default in making payments on the Third Party Loan), or (ii) if Bank Loan or Bank Lien does contain any such provision(s), Bank will not exercise its rights under the provision(s) so long as the Six County Loan has any outstanding unpaid balance.

c. No Cross-Collateralization. Bank agrees that the Common Collateral is not now, and will not be in the future, security for any other financing provided by Bank to Borrower other than the Third Party Loan, unless authorized in writing by Six County.

d. No Cross-Default. During the term of the Bank Loan, Bank will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Bank Loan or Bank Lien which allow Bank to make demand prior to maturity (other than when Borrower is in default in making payments on the Bank Loan), unless authorized in writing by Six County.

e. Maturity and Balloon Payments. The Bank Loan has an overall maturity of at least ten (10) years, and does not require a balloon payment prior to ten (10) years from the date of the note.

f. Reasonable Interest Rate. The Bank Loan has a reasonable interest rate which does not and will not exceed 12.00 %.

5. No Preference. Bank will take no action that would establish a preference to the disadvantage of Six County in favor of Bank as compared to Six County, related to making, servicing, or liquidating the Bank Loan (including without limitation actions with respect to repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a certificate of deposit, or acceptance of a separate or companion loan), other than Bank's senior lien position on the Common Collateral.

6. Notice of Default under the Bank Loan. In the event that Bank decides to pursue debt collection or other action against a borrower due a default under the Third Party Loan or Third Party Lien, Bank agrees to give Six County written notice of such default within thirty (30) days after the event of default. After a default, Bank also will give Six County written notice at least sixty (60) days prior to Bank's foreclosure upon the Common Collateral.

7. Certification as to Default Interest Rate as Against Borrower. Any right Bank may have to increase the rate of interest upon default under the Bank Loan, as against Borrower, does not exceed 12.00 %.

8. Subordination to Six County Loan and Six County Lien of Amounts Attributable to Default Provisions.

a. The term "Default Provisions" used in this paragraph means prepayment fees or charges, default interest rates (in excess of the amount of interest charged in the absence of a default), monetary penalties for violations of any agreement between Bank and Borrower (including without limitation penalties for violation of covenants regarding environmental conditions); and late payment fees or charges.

b. To the extent the Bank Lien secures any amounts attributable to Default Provisions, which may exist in the Bank Loan and Bank Lien, Bank Lien is and will be subordinate to the Six County Loan and the Six County Lien.

c. In the event of default under the Bank Loan, Six County may bring the Bank Loan current or may acquire the Bank Loan secured by the Bank Lien. Bank agrees that in either of these circumstances, the amount to bring the Bank Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Provisions so subordinated to the Six County Loan and Six County Lien.

9. Waiver of Right to Indemnification If Bank's documents contain provisions granting Bank the right to indemnification by subsequent owners of the Project Property, then Bank waives its right to enforce such provisions against Six County in the event Six County acquires title to the Project Property through foreclosure of Six County lien, acceptance of a deed in lieu of foreclosure, or otherwise.

10. No Implied Third Party Beneficiaries. To the extent there is a conflict between this Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Agreement shall supercede any such provision. The parties agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower.

12. Successors and Assigns. This Agreement will inure to the benefit of and bind the respective parties to this Agreement, and their successors and assigns, including any party acquiring the Bank Loan and Bank Lien by sale, assignment, or other transfer from Bank. Bank agrees that Six County may assign this Agreement, and waives all rights to contest such assignment.

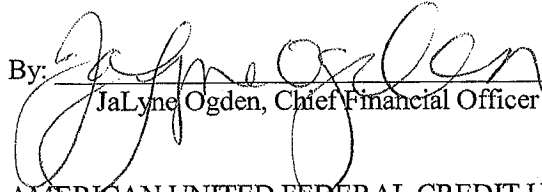
13. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

14. Validity of Provisions. In the event that any provision of this Agreement is deemed invalid by a court of law, all other provisions of this Agreement shall remain valid and enforceable.

15. Authority to Execute Agreement. The persons signing below certify that they have been duly authorized to execute this Agreement on behalf of their respective Party.

DATED the first date written above.

SIX COUNTY ECONOMIC DEVELOPMENT DISTRICT

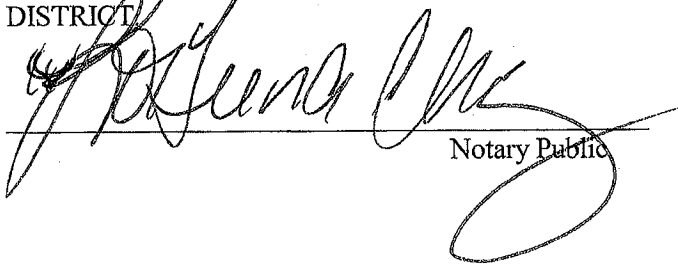
By:   
JaLyne Ogden, Chief Financial Officer

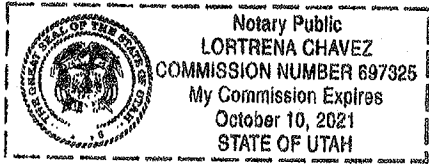
AMERICAN UNITED FEDERAL CREDIT UNION

By:   
Its: PRES/CFO

STATE OF UTAH )  
 :ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me on 16 May 2019 by  
JaLyne Ogden, Chief Financial Officer of SIX COUNTY ECONOMIC DEVELOPMENT  
DISTRICT

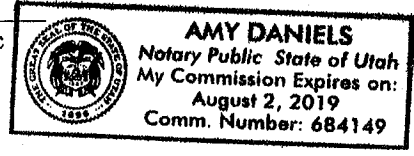
  
Notary Public



STATE OF UTAH )  
 :ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me on 23 May 2019 by  
Michelle Thorne (individual name of person signing  
document), president / CEO (title) of AMERICAN UNITED FEDERAL CREDIT  
UNION.

  
Notary Public



Order No.: 9-002360

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Beginning at the Northwest corner of Tax Parcel O-867, said point being located North  $00^{\circ}11'48''$  West 1219.43 feet along the Quarter Section line and North  $89^{\circ}58'02''$  West 455.81 feet along the South right-of-way line of State Highway U-24 from the South Quarter corner of Section 7, Township 29 South, Range 5 East, Salt Lake Base and Meridian; and running thence South 448.65 feet along the West boundary of Parcel O-867 to the North line of Parcel O-867-2; thence South  $89^{\circ}59'23''$  West 430.80 feet along the existing fence line to the East boundary of Tax Parcel O-865; thence North  $00^{\circ}21'25''$  West 448.98 feet along said East boundary to the aforesaid South right-of-way line of State Highway U-24; thence South  $89^{\circ}58'02''$  East 433.59 feet along said right-of-way line to the point of beginning.

Together with an access easement and right-of-way described as follows: Beginning at the Northwest corner of Janet Quinn Smith & Paul Smith Parcel O-867, said point being located North  $00^{\circ}11'48''$  West 1219.43 feet along the Quarter Section line and North  $89^{\circ}58'02''$  West 455.81 feet along the South right-of-way line of State Highway U-24 from the South Quarter corner of Section 7, Township 29 South, Range 5 East, Salt Lake Base and Meridian; and running thence South  $89^{\circ}58'02''$  East 32 feet along said right-of-way line to a rebar & cap marked LS6616; thence South 30.00 feet; thence West 8 feet; thence South 418.62 feet to a rebar & cap marked LS161712 on the South boundary of Parcel O-867; thence South  $89^{\circ}59'23''$  West 24.00 feet along the South boundary to a rebar & cap marked LS164561 at the Southwest corner of said parcel; thence North 448.65 feet along the West boundary of said parcel to the point of beginning.

Parcel No.: 02-0039-0889