

When recorded return to:
Utah Certified Development Company
5333 South Adams Ave., Suite B
Ogden, Utah 84405

File Name: DGI St. George
Loan #: 28714370-10

FATW NCS-924034



THIRD PARTY LENDER AGREEMENT

THIS THIRD PARTY LENDER AGREEMENT (Agreement) is dated this 30th day of OCTOBER, 2018, by and between Utah First Federal Credit Union, (Third Party Lender) whose address is 200 EAST SOUTH TEMPLE, SALT LAKE CITY, UTAH 84111, and Utah Certified Development Company, (CDC) whose address is 5333 South Adams Ave, Suite B, Ogden, UT 84405.

RECITALS

1. The Third Party Lender and CDC will provide separate loans to the Borrower and Operating Company, if any (collectively "Borrower"), according to the terms in the "Authorization for Debenture Guarantee (SBA 504 Loan)," as amended (Authorization). The Third Party Lender will provide term financing (Third Party Loan), and the CDC will provide a loan ("504 Loan") funded by a debenture issued by the CDC and guaranteed by the U.S. Small Business Administration (SBA), for purposes of financing the Project described in the Authorization, which involves the acquisition and/or improvement of the real and/or personal property described below, and in Exhibit A attached hereto and incorporated herein by reference (Project Property):

SBA Loan #:	<u>28714370-10</u>
SBA Loan Name:	<u>DGI St. George</u>
Borrower:	<u>Nisha Hospitality, LLC</u>
Operating Company (if any):	<u>Nisha Hospitality, LLC, dba: DGI St. George</u>
Third Party Loan Amount:	<u>\$4,074,650.00</u>
Term of Third Party Loan:	<u>10 yr</u>

If Real Property -- Project Property Address
Street address: 1450 South Hilton Drive, St. George, UT 84770-6752
Attach Legal description as Exhibit A

If Personal Property: Describe property, including name of manufacturer, name of equipment, and applicable serial number(s) or other identifying numbers for property valued at \$5000 or more.

2. The parties have required the Borrower to grant liens on the Project Property to secure the separate loans advanced by the parties (Common Collateral), and the lien of the CDC (CDC Lien) will be junior and subordinate to the lien of the Third Party Lender (Third Party Lender Lien), unless Third Party Lender, CDC and SBA agree otherwise in writing.

TERMS AND CONDITIONS

In consideration of the above, 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 Third Party Loan.** The Third Party Lender represents that the Third Party Loan is fully advanced; does not exceed the amount stated in the Authorization; and, will not exceed the amount allowed by the Authorization, plus reasonable costs of collection, maintenance, and protection of the Third Party Lender Lien. Any amounts owed by Borrower to Lender in excess of the Third Party Lender Lien amount stated in the Authorization cannot be secured by a lien on the Common Collateral unless it is subordinate to the 504 Loan.

2. **Subordination of 504 Loan.** CDC agrees to make the 504 Loan to the Borrower, subject to SBA's approval, and accept a junior and subordinate lien position in the Common Collateral upon the conditions that Third Party Lender executes this Agreement and disburses the Third Party Loan according to the terms represented to CDC and SBA.

3. **Accurate Information.** The Third Party Lender warrants and represents that all information provided by the Third Party Lender to CDC including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Third Party Lender has not withheld any material information. Third Party Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Third Party Lender further acknowledges that any false statements to CDC can be considered false statement to the federal government under 18 U.S.C. § 1001, and may subject the Third Party Lender to criminal penalties, and that CDC and SBA, are relying upon the information submitted by the Third Party Lender.

4. **Waiver of Provision Not to Encumber Common Collateral.** Third Party Lender waives its right to enforce, as against CDC and SBA, any provisions in its documents that prohibit Borrower from further encumbering the Common Collateral or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Common Collateral.

5. **Compliance with 504 Loan Program Requirements.** Third Party Lender agrees that all documents evidencing the Third Party Loan and the Third Party Lender Lien will comply with the 504 Loan Program requirements as established by SBA, including those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these 504 Loan Program requirements, Third Party Lender waives any right to enforce such provisions while the 504 Loan has any unpaid balance and agrees that it must act in a commercially reasonable manner with regard to any enforcement action.

a. **No Open-Ended Features and No Future Advances.** The Third Party Loan must not be open-ended. After completion of the project, the Third Party Lender may not

make future advances under the Third Party Loan except reasonable costs of collection, maintenance, and protection of the Third Party Loan and Third Party Lender's lien,

b. No Early Call or Demand Provisions. Third Party Lender agrees that documents evidencing the Third Party Loan and the Third Party Lender Lien do not contain any early call feature or any provisions which allows Third Party Lender to make demand under the Third Party Lender Loan other than when there is a material default under the terms of its Third Party Loan documents, which shall include, but not limited to, failure to make timely payments on the Third Party Loan, failure to pay taxes when due or violation of any financial covenants which would cause a prudent lender to believe that the prospect of payment or performance of the Third Party Note is impaired.

c. No Cross-Collateralization. Third Party Lender agrees that the Common Collateral will only secure its Third Party Loan and the Common Collateral is not currently, and will not be used in the future, as security for any other financing provided by Third Party Lender to Borrower that purports to be in a superior position to that of the CDC Lien, unless authorized in writing by CDC and SBA.

d. No Cross-Default. During the term of the 504 Loan, Third Party Lender, will not exercise any cross-default, "deem at-risk," or any other provisions in documents evidencing the Third Party Loan or Third Party Lender Lien which allow Third Party Lender to make demand on the Third Party Loan prior to maturity unless the Third Party Loan is in material default.

e. Maturity and Balloon Payments. The Third Party Loan must have a term of at least 7 years (when the 504 loan is for a term of 10 years), or a term of at least 10 years (when the 504 loan is for 20 or 25 years). If the Third Party Lender had made more than one loan, then an overall loan maturity must be calculated, taking into account the amounts and maturities of each loan. Any balloon payment for the Third Party Loan must be clearly identified and disclosed to SBA and approved at application or subsequently approved by SBA.

f. Reasonable Interest Rate. The Third Party Loan has a reasonable interest rate which does not and will not exceed the maximum interest rate for Third Party Loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Agreement.

6. Marshaling of Assets. If the Third Party Lender takes additional collateral as security for the Third Party Loan, in the case of liquidation, any proceeds received from such additional collateral, must be applied to the Third Party Lender's Loan prior to the proceeds from the liquidation of the Common Collateral held by the CDC/SBA and the Third Party Lender. If the additional collateral no longer exists at the time of liquidation, or has insufficient value to justify the cost of collection, then the Third Party Lender is not required to liquidate such collateral, provided the Third Party Lender notifies CDC/SBA.

7. Notice of Default under the Third Party Loan. Within thirty (30) days after the expiration of any cure period for any continuing material default of the Third Party Loan or Third Party Lender Lien, Third Party Lender must provide written notice (referencing SBA's loan number for the 504 loan), of the default to CDC and SBA. At least sixty (60) days prior to any legal proceeding against or liquidation of Common Collateral (not including sending a demand letter), Third Party Lender must provide SBA with written notice of its intent to do so.

8. Limitation on Default Interest Rate. Third Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate published by SBA in the Federal Register. SBA will only pay the interest rate on the note in effect before the date of Borrower's default.

9. Subordination to 504 Loan and/or CDC Lien, of Amounts Attributable to Default Provisions.

a. The term "Default Charges" used in this paragraph includes, but is not limited to, prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

b. To the extent the Third Party Lender Lien secures any amounts attributable to Default Charges, which may exist in the Third Party Loan and Third Party Lender Lien, Third Party Lender Lien is and will be subordinate to the 504 Loan and the CDC Lien. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Third Party Loan.

c. In the event of default under the Third Party Loan, CDC or SBA may bring the Third Party Loan current or may acquire the Third Party Loan secured by the Third Party Lender Lien. Third Party Lender agrees that in either of these circumstances, the amount to bring the Third Party Loan current or the purchase price of that loan will be net of all amounts attributable to the Default Charges so subordinated to the 504 Loan and the CDC Lien. Third Party Lender further agrees that if it receives from CDC or SBA any amounts attributable to such Default Charges, Third Party Lender holds such funds in trust for SBA and will remit such funds to SBA as soon as possible. In addition, Third Party Lender shall charge as against SBA only the interest rate on the Third Party Loan that was in effect before the date of Borrower's default. Should CDC or SBA not purchase the Third Party Loan but rather bring the Third Party loan current, Default Charges on the Third Party Loan may remain due and owing from the Borrower.

d. The Third Party Lender agrees:

(1) If the Third Party Lender sells its Note (other than when liquidating the Third Party Loan), then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's

name, address and telephone number and confirmation that the purchaser has received a copy of the executed Third Party Lender Agreement.

(2) If the Third Party Loan is in default and the Third Party Lender, as part of its liquidation strategy.

(i) purposes to sell its note, or

(ii) receives an offer from a Third Party, then the Third Party Lender must provide CDC/SBA with the option to purchase the note at the same price offered by the potential purchaser, net any Default Charges per paragraph 9(c). SBA will have forty-five (45) days from receipt of the notice from the Third Party Lender to exercise its option to purchase the note. If SBA does not exercise its option and the Third Party Lender sells its note, then the Third Party Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address, and telephone number, and must provide the purchaser with a copy of the executed Third Party Lender Agreement.

e. If the Third Party Lender sells or otherwise transfers its note to a third party, then any Default Charges, including, but not limited to, prepayment penalties, late fees, other Default Charges, and escalated interest after default due under the Third Party Loan must be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

f. If the Third Party Lender loan documents contain a swap component or hedging contract (hereinafter defined as "swap agreement"), all costs associated with this swap agreement, which may be termed swap fees, termination fees, default fees or other related fees, shall be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

10. **Liquidation.** In the event that either the Third Party Loan or the 504 Loan is declared in default, Third Party Lender and CDC and SBA agree to cooperate in liquidating and/or selling the Common Collateral. Third Party Lender agrees to (a) accept a U.S. Treasury check(s) in connection with any purchase of Third Party Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Third Party Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Third Party Lender; and (d) to provide any other information about Borrower or the Third Party Loan requested by CDC and SBA in writing.

11. Waiver of Right to Indemnification by SBA or CDC. If Third Party Lender's documents contain provisions granting Third Party Lender the right to indemnification by subsequent owners of the Project Property, then Third Party Lender waives its right to enforce such provisions against SBA or CDC in the event SBA or CDC acquires title to the Project Property through foreclosure of the CDC Lien, acceptance of a deed in lieu of foreclosure, or otherwise.

NA 12. Bank Regulatory Issues. If Third Party Lender is regulated by one of the Federal functional regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, or National Credit Union Administration), Third Party Lender represents that it is subject to the Joint Final Rule on Customer Identification Programs (CIP) in 31 C.F.R. 103.121 and that it or its agent will perform with respect to the Borrower the specified requirements of its CIP.

13. 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 SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

14. 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 Third Party Loan and Third Party Lender Lien by sale, assignment, or other transfer from Third Party Lender. Third Party Lender agrees that CDC may assign this Agreement to SBA, and waives all rights to contest such assignment.

15. Federal Law. When SBA is the holder of the loan instruments evidencing the 504 Loan and any security for that loan (including but not limited to the CDC Lien on the Common Collateral), this Agreement and all such instruments will be construed in accordance with Federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. The Third Party Lender may not claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

16. Termination: This document will be released and terminated upon the payment in full of either the Third Party Loan or the 504 loan and all costs related thereto.

17. 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.

CERTIFIED DEVELOPMENT COMPANY (CDC):

Utah Certified Development Company

By: Caryl A Eriksson
Caryl A Eriksson, Vice President

ASSIGNMENT TO SBA

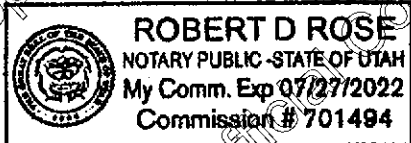
Utah Certified Development Company hereby transfers, sets over and assigns unto U.S. Small Business Administration, an Agency of the United States, all of its right, title and interest in and to this Agreement.

ACKNOWLEDGEMENT

STATE OF UTAH)

COUNTY OF WASHINGTON)

On this 30th day of October, 2018, personally appeared before me, Caryl A. Eriksson, who being by me duly sworn, did say that she is the Vice President of **Utah Certified Development Company**, a Utah Corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors.



[Signature]
NOTARY PUBLIC
Residing at: Ogden, Utah

EXHIBIT "A"

Debtor and Trustor: Nisha Hospitality, LLC
dba: DGI St. George

Secured Party and Beneficiary: Utah Certified Development Company and
The U. S. Small Business Administration

Real Property Description

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BEGINNING AT A POINT SOUTH 0°48'46" EAST 4.86 FEET ALONG THE SECTION LINE AND NORTH 89°12'12" EAST 196.18 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 89°12'12" EAST 410.58 FEET TO THE WEST LINE OF THE I-15 FRONTAGE ROAD AND A POINT ON A CURVE TO THE RIGHT, THE RADIUS POINT OF WHICH BEARS SOUTH 73°30'44" WEST 1349.86 FEET; THENCE SOUTHEASTERLY 362.02 FEET ALONG THE ARC OF SAID CURVE AND THE WEST LINE OF SAID FRONTAGE ROAD; THENCE SOUTH 89°00'06" WEST 183.06 FEET; THENCE SOUTH 0°59'54" EAST 144.20 FEET TO POINT ON THE NORTH LINE OF 1470 SOUTH STREET; THENCE NORTH 89°03'46" WEST 261.58 FEET ALONG THE NORTH LINE OF SAID 1470 SOUTH STREET; THENCE NORTH 0°48'46" WEST 61.00 FEET; THENCE NORTH 89°02'33" EAST 16.48 FEET; THENCE NORTH 0°48'46" WEST 99.72 FEET; THENCE SOUTH 89°02'33" WEST 33.00 FEET; THENCE NORTH 01°27'42" WEST 17.58 FEET; THENCE SOUTH 88°32'18" WEST 8.44 FEET; THENCE NORTH 0°58'28" WEST 36.63 FEET; THENCE NORTH 0°56'15" EAST 279.68 FEET TO THE POINT OF BEGINNING.

LESS: A PARCEL OF LAND IN FEE TO THE CITY OF ST GEORGE, BY WARRANTY DEED RECORDED JULY 7, 2010 AS ENTRY NO. 20100022323; BEING PART OF AN ENTIRE TRACT OF PROPERTY, SITUATE IN THE SW1/4SW1/4 OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN THE BOUNDARIES OF SAID PARCEL OF LAND ARC DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT AND THE WESTERLY HIGHWAY RIGHT OF WAY LINE OF THE EXISTING I-15 FRONTAGE ROAD, WHICH POINT IS 4.86 FEET S.0°48'46"E. ALONG THE SECTION LINE AND 606.76 FEET, MORE OR LESS, N.89°12'12"E. FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 31; AND RUNNING THENCE S.89°12'12"W. 79.16 FEET TO A POINT 31.84 FEET PERPENDICULARLY DISTANT SOUTHERLY FROM THE CONTROL LINE OF HILTON DRIVE OF SAID PROJECT, OPPOSITE APPROXIMATE ENGINEERS STATION 108+58.25; THENCE S.00°47'43"E. 0.16 FEET; THENCE EASTERLY 53.51 FEET ALONG THE ARC OF A 76.00-FOOT RADIUS CURVE TO THE RIGHT, (CHORD BEARS S.70°27'34"E. 52.41 FEET) TO THE POINT OF COMPOUND CURVATURE OF A 36.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 5.08 FEET ALONG THE ARC OF SAID CURVE, (CHORD BEARS S.46°14'52"E. 5.08 FEET) TO THE POINT OF COMPOUND CURVATURE OF A 286.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE

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SOUTHEASTERLY 99.75 FEET ALONG THE ARC OF SAID CURVE, (CHORD BEARS S.32°12'50"E. 99.25 FEET) TO SAID WESTERLY HIGHWAY RIGHT OF WAY LINE OF THE EXISTING I-15 FRONTAGE ROAD; THENCE NORTHERLY 109.63 FEET ALONG THE ARC OF A 1,349.86-FOOT RADIUS CURVE TO THE LEFT, CHORD BEARS N.14°09'40"W. 109.60 FEET TO THE POINT OF BEGINNING AS SHOWN ON THE OFFICIAL MAPS OF SAID PROJECT ON FILE IN THE OFFICE OF THE UTAH DEPARTMENT OF TRANSPORTATION.

ALSO LESS: BEGINNING AT A POINT ON THE NORTH LINE OF 1470 SOUTH STREET, SAID POINT BEING NORTH 00°48'46" WEST 838.26 FEET ALONG THE SECTION LINE AND SOUTH 89°03'46" EAST 213.00 FEET ALONG SAID NORTH LINE FROM THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°48'46" WEST 61.00 FEET; THENCE NORTH 89°02'33" EAST 16.48 FEET; THENCE NORTH 00°48'46" WEST 74.38 FEET; THENCE NORTH 89°00'07" EAST 244.51 FEET; THENCE SOUTH 00°59'54" EAST 144.20 FEET TO THE NORTH LINE OF SAID 1470 SOUTH STREET; THENCE NORTH 89°03'47" WEST 261.57 FEET TO THE POINT OF BEGINNING.

SG-5-2-31-3337

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The address of such property is:
1450 South Hilton Drive, St. George, UT 84770-6752

The owner of such real property is:
Nisha Hospitality, LLC