

Prepared by and when recorded return to:
KG Store 2500, L.L.C.
1459 Grand Avenue
Des Moines, Iowa 50309-3005

13855647 B: 11287 P: 128 Total Pages: 8
12/27/2021 08:29 AM By: ndarmiento Fees: \$40.00
NOTICE- NOTICE
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: FIRST AMERICAN TITLE INSURANCE COMPANY - NCS ON
4909 S. 135 STREET, SUITE 207OMAHA, NE 68137

Tax Parcel Id Nos: 33-01-252-007, 33-01-252-008, and 33-01-252-009

DECLARATION OF USE RESTRICTION

THIS DECLARATION OF USE RESTRICTION (this "Declaration") dated effective the 21st day of December, 2021, (the "Effective Date") is made by the DRAPER HOTEL PARTNERS, LLC, a Utah limited liability company (the "Commercial Owner") and KG STORE 2500, L.L.C., an Iowa limited liability company (the "Gas Station Owner") WITNESSETH:

RECITALS

A. The Commercial Owner is the owner of the Commercial Parcel (defined below); and

B. The Commercial Owner and Gas Station Owner desire to enter into this Declaration relating to certain obligations with respect to the Commercial Parcel and the Gas Station Parcels (defined below).

NOW, THEREFORE, THE COMMERCIAL OWNER AND GAS STATION OWNER HEREBY DECLARES AND IMPOSES THE FOLLOWING:

1. Recitals. The Recitals set forth above are incorporated by this reference.

2. Gas Station Parcel. The following parcels of real property are individually and collectively, as the context may require, referred to herein as the "Gas Station Parcels", to-wit:

LOTS 101 AND 102, AMENDED LOT 1 OF THE 136 CENTER OFFICE PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED APRIL 24, 2018, AS ENTRY NO. 12759232 IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

3. Commercial Parcel. The following parcels of real property are individually and collectively, as the context may require, referred to herein as the "Commercial Parcel"), to-wit:

LOT 103, AMENDED LOT 1 OF THE 136 CENTER OFFICE PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED APRIL 24, 2018, AS ENTRY NO. 12759232 IN THE SALT LAKE COUNTY RECORDER'S OFFICE

4. Use Restrictions on Commercial Parcel. For a period of twenty (20) years following the date of this Declaration, so long as the owner of the Gas Station Parcels has commenced the operation of the Gas Station Use (defined below) on the Gas Station Parcels within two (2) years of the date hereof, and so long as such owner has not ceased operating the Gas Station Use on the Gas Station Parcels for a period in excess of six (6) months, the Commercial Parcel shall not be used for any of the following (the "Gas Station Use"):

- a. A gasoline station, including any type of business that sells diesel fuel, ethanol fuel, bio-fuel or any other type of fuel used to power motorized vehicles designed primarily for use on public streets and highways; provided, the foregoing will not limit the Commercial Owner's from installing electric charging stations on their respective properties; and
- b. A convenience store.

5. Use Restrictions on Gas Station Parcels. No portion of the Gas Station Parcels will be used for a hotel, motel, or similar business used for temporary, overnight lodging for third parties.

6. Hazardous Materials.

- a. The owner of the Gas Station Parcel (and its tenants, subtenants, licensees or other users) (the "Gas Station Parties") will comply at all times with applicable laws relating to Hazardous Materials (defined below), including, without limitation, laws relating to the storage, use, disposal or treatment of Hazardous Materials. All facilities on the Gas Station Parcel for the storage, distribution and sale of gasoline, diesel fuel, other petroleum products and their additives and any other Hazardous Materials, including, without limitation, underground fuel tanks, pumps and associated lines (the "Fuel Station Facilities") (a) shall be structurally safe and sound, well built and fit and constructed in accordance with all applicable laws, (b) in the event of a change in any applicable laws, affecting the Fuel Station Facilities, the Gas Station Parties will, at its sole cost and expense, comply with such revised requirements, and (c) the Gas Station Parties shall undertake all monitoring and testing of any underground storage tanks or other fuel distribution equipment required by any applicable laws. In the event of any release of Hazardous Materials in violation of applicable laws, the Gas Station Parties will promptly remediate such Hazardous Materials in accordance with applicable laws, which remediation will include obtaining approvals from applicable governmental authorities that no further action is required with respect to the remediation of such Hazardous Materials.
- b. The Gas Station Parties shall indemnify, defend and hold harmless the Commercial Owner, its contractors, agents, employees, tenants, subtenants and lenders from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including reasonable attorneys' fees) arising from or in connection with the

presence of Hazardous Materials, in or under the Commercial Parcel, released by any Gas Station Parties.

- c. "Hazardous Materials" mean any (i) hazardous, harmful, dangerous, or toxic waste, item, substance, material, or product (including, without limitation, any and all petroleum based products) as defined by any federal, state, or local environmental and/or health law, act, edict, directive, decree, rule, statute, ordinance, or regulation, including without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et seq., (b) the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 5101, et seq., (c) the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et seq., (d) the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et seq., (e) the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et seq., (f) all state or local environmental laws, and (g) any and all regulations related to any of the foregoing; or (ii) other item, substance, material, or product prohibited, limited, or regulated by or under any of the laws, acts, edicts, directives, decrees, rules, statutes, ordinances, or regulations described above.

7. Term. Except to the extent specifically set forth herein, this Declaration shall remain in full force and effect unless terminated pursuant to a written agreement executed by the Gas Station Owner and the Commercial Owner, which written agreement will be recorded in the Salt Lake County recorder's office.

8. Restrictions Run with Land. The rights and obligations imposed by this Declaration shall constitute covenants running with the land and, as such, shall be binding upon the owners from time-to-time of the Commercial Parcel and the Gas Station Parcel and their respective heirs, successors and assigns.

9. Severability. If any provision of this Declaration is invalid, illegal or incapable of being enforced by any law or public policy, all other provisions of this declaration shall remain in full force and effect.

10. Enforcement. Each owner of a Commercial Parcel and Gas Station parcel shall have the right to enforce by proceedings at law or in equity, all of the terms, provisions, covenants, conditions and restrictions of this Declaration, including the right to prevent the violation of any of the same and the right to recover damages or other amounts for such violation. Failure of any party to enforce any term, provision, covenant, condition or restriction of this Declaration in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any future breach of the same or of any other term, provision, covenant, condition or restriction herein contained.

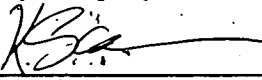
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IN WITNESS WHEREOF, the Commercial Owner and the Gas Station Owner has caused this Declaration of Use Restriction to be executed on or as of the day and year first above written.


COMMERCIAL OWNER

DRAPER HOTEL PARTNERS, LLC, a Utah
limited liability company, by its managers

TGC Draper Hotel Partners, LLC, a Utah limited
liability company

By: 
Name: Kevin S. Barn
Title: Manager

STACK Draper Hotel, LLC, a Utah limited liability
company

By: 
Name: Nathan Riches
Title: Manager

IN WITNESS WHEREOF, the Commercial Owner and the Gas Station Owner has caused this Declaration of Use Restriction to be executed on or as of the day and year first above written.


COMMERCIAL OWNER

DRAPER HOTEL PARTNERS, LLC, a Utah limited liability company, by its managers

TGC Draper Hotel Partners, LLC, a Utah limited liability company

By: _____
Name: _____
Title: _____

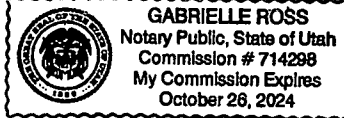
STACK Draper Hotel, LLC, a Utah limited liability company

By: 
Name: Nathan Richards
Title: Manager

STATE OF UTAH)
 : ss.
COUNTY OF ~~SALT LAKE~~ DAVIS *pd*

On this 23 day of December, 2021, before me, the undersigned, personally appeared Kevin C. Garn, known or identified to me to be a manager of TGC Draper Hotel Partners, LLC; a Utah limited liability company, the manager of DRAPER HOTEL PARTNERS, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Gabrielle Ross
NOTARY PUBLIC

My Commission Expires: 10/26/2024

Residing at: Layton, UT

STATE OF UTAH)
 : ss.
COUNTY OF ~~SALT LAKE~~ UTAH)

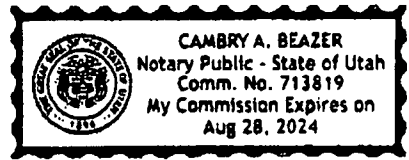
On this 21st day of December, 2021, before me, the undersigned, personally appeared Nathan Ricks, known or identified to me to be a manager of STACK Draper Hotel, LLC, a Utah limited liability company, the manager of DRAPER HOTEL PARTNERS II, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Cambry A. Beazer
NOTARY PUBLIC

My Commission Expires:
Aug 20, 2024

Residing at: Riverton, UT



STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this ____ day of _____, 2021, before me, the undersigned, personally appeared _____, known or identified to me to be a manager of TGC Draper Hotel Partners, LLC, a Utah limited liability company, the manager of DRAPER HOTEL PARTNERS, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC

My Commission Expires:

Residing at: _____

STATE OF UTAH)
 : ss.
COUNTY OF ~~SALT LAKE~~ UTAH)

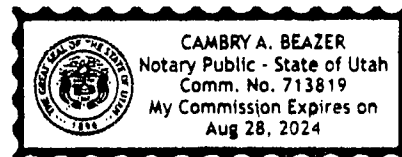
On this 21st day of December, 2021, before me, the undersigned, personally appeared Nathan Ricks, known or identified to me to be a manager of STACK Draper Hotel, LLC, a Utah limited liability company, the manager of DRAPER HOTEL PARTNERS II, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Cambry A. Beazer
NOTARY PUBLIC

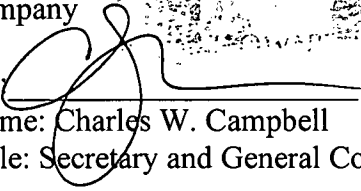
My Commission Expires:
Aug 20, 2024

Residing at: Riverton, UT



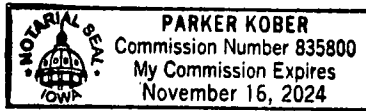
GAS STATION OWNER


KG STORE 2500, L.L.C., an Iowa limited liability company

By 
Name: Charles W. Campbell
Title: Secretary and General Counsel

STATE OF IOWA, COUNTY OF POLK

This instrument was acknowledged before me on December 21, 2021, by Charles W. Campbell as Secretary and General Counsel of KG Store 2500, L.L.C., an Iowa limited liability company.




Notary Public in and for said State