

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

PROCACCIANTI HOTEL REIT, INC.

CIK: **1692345** | IRS No.: **813661609** | State of Incorporation: **MD** | Fiscal Year End: **1231**
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SIC: **6798** Real estate investment trusts

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
Date of Report (Date of earliest event reported): June 3, 2021**

**PROCACCIANTI HOTEL REIT, INC.
(Exact Name of Registrant as Specified in Its Charter)**

**Maryland
(State or other jurisdiction of
incorporation or organization)**

**000-56272
(Commission
File Number)**

**81-3661609
(I.R.S. Employer
Identification No.)**

**1140 Reservoir Avenue
Cranston, Rhode Island 02920-6320
(Address of principal executive offices)
(401) 946-4600
(Registrant's telephone number, including area code)**

**N/A
(Former name or former address, if changed since last report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Purchase and Sale Agreement and Assignment Agreement

On April 28, 2021, The Procaccianti Group, LLC (“Procaccianti Group”), an affiliate of Procaccianti Companies, Inc. (the “Sponsor”), the sponsor of Procaccianti Hotel REIT, Inc. (the “Company”), entered into that certain Purchase and Sale Agreement (as amended, the “Purchase and Sale Agreement”) by and between Pride One Cherry Tree, LLC and IPN-Pride Investment Holdings, LLC (collectively, the “Seller”) to acquire the 76-unit hotel property known as the Cherry Tree Inn and Suites, located at 2345 N. US 31 North, East Bay Township, Grand Traverse County, Michigan (the “Property”), for a total purchase price of \$15.0 million (the “Purchase Price”). The Seller is not affiliated with the Sponsor or the Company.

Pursuant to an Assignment of Purchase and Sale Agreement, effective as of June 3, 2021 (the “Assignment Agreement”), Procaccianti Group assigned, and PHR Cherry PropCo, LLC (the “Assignee”), a wholly-owned subsidiary of Procaccianti Hotel REIT, L.P., the operating partnership of the Company (the “Operating Partnership”), assumed, all of Procaccianti Group’s right, title and interest in and under the Purchase and Sale Agreement, giving the Assignee the right to acquire the Property pursuant to the Purchase and Sale Agreement.

Ground Lease

On June 3, 2021 (the “Initial Closing Date”), the Assignee completed the Initial Closing (as defined in the Purchase and Sale Agreement), whereby pursuant to the Purchase and Sale Agreement, Assignee, as tenant, and Seller, as landlord, entered into that certain Ground Lease (the “Ground Lease”), effective as of the Initial Closing Date, a copy of which is filed hereto as Exhibit 10.3. The term of the Ground Lease commenced on the Initial Closing Date and shall expire on the earliest to occur of (a) one (1) year following the Initial Closing Date, (b) the Final Closing Date (as defined in the Purchase and Sale Agreement) and (c) the earlier termination of the Purchase and Sale Agreement, unless terminated earlier or extended by mutual consent of the parties. The rent amount payable under the Ground Lease is \$100 per month plus all principal and interest due under the Promissory Note (as defined below), plus reimbursement of property insurance premiums applicable to the property, payable in advance on or before the 5th day of each month, without demand or set-off. The Assignee will operate the Property in a manner consistent with its operation prior to the Initial Closing Date. The Ground Lease includes certain customary covenants, representations and warranties.

Loan

Prior to the Initial Closing Date, the Property was encumbered by a certain mortgage loan (the “Current Loan”). As a condition precedent to the Seller’s obligation to enter into the Ground Lease, at the Initial Closing (a) Seller and PHR OP Lender Sub, LLC, an affiliate of the Sponsor, and subsidiary of the Company, entered into a loan in the principal amount of \$7,689,593.65 secured by a promissory note (the “Promissory Note”) and mortgage (the “Mortgage,” and together with the Promissory Note, the “Loan”), copies of which are filed hereto as Exhibit 10.4 and Exhibit 10.5, (b) with the proceeds from the Loan, Seller caused the Current Loan to be paid in full at the Initial Closing and (c) the current lender under the Current Loan delivered all documents necessary to terminate its security interests in the Property. The Loan is collateralized by the Property, has an outstanding principal amount of \$7,689,593.65 and bears interest at a fixed interest rate of 5.785% per annum. During any period of default under the Loan, the interest rate shall increase to 10.0% per annum. The Loan matures on the earlier of (A) sixty (60) days following the termination of the Purchase Agreement prior to the Final Closing (provided, however, if the Purchase Agreement is terminated due to an event of default by Borrower, as Seller thereunder, upon such default, (B) six (6) months following the termination of the Purchase Agreement prior to the Final Closing if terminated due to an event of default by the Buyer under the Purchase Agreement, and (C) the Final Closing (as defined in the Purchase Agreement).

Pursuant to the Purchase and Sale Agreement, at the Final Closing, Seller will pay the Loan in full and Seller and the Assignee will terminate the Ground Lease and consummate the sale of the Property, and thereafter the Assignee will become the fee owner of the Property. The Company expects Final Closing to occur within the next six months, subject to the satisfaction or waiver of certain closing conditions set forth in the Purchase and Sale Agreement. There can be no assurance that the Company will complete the acquisition of the Property. The Company intends to acquire the Property using net offering proceeds from its public offering and debt.

Hotel Management Agreement

On June 3, 2021, PHR Cherry Opco Sub, LLC (“Owner”), a subsidiary of the Company, entered into a hotel management agreement (the “Hotel Management Agreement”) with PHR Cherry Tree Hotel Manager, LLC (“Manager”), an affiliate of Procaccianti Companies, Inc., to manage the Property.

Under the Hotel Management Agreement, Manager operates and manages the Property. Manager will provide all property management, financial accounting, reporting, advertising, and other operational services for the Property, and employees for operating the hotel. Manager must generally maintain the Property in good operating condition. Manager must provide to Owner a proposed operating budget at least annually.

The Hotel Management Agreement generally requires the Owner to fund budgeted capital expenditures and operating expenses, except those expenses not related to the operation of the hotel. The Owner is responsible for obtaining and maintaining insurance policies with respect to the Property, except for insurance relating to employment matters, which is provided by Manager.

Manager will receive a hotel management fee each fiscal year with respect to the Property equal to 3% of total operating revenues of the Property (which exclude the gross receipts of any licensees, lessees and concessionaires) paid on a monthly basis, in addition to certain expense and centralized services costs reimbursements. The Hotel Management Agreement has an initial term of 10 years, with four automatic one-year renewals, unless otherwise terminated in accordance with the Hotel Management Agreement.

The Hotel Management Agreement was approved by a majority of the Company’s board of directors (the “Board”) (including a majority of the independent directors) not otherwise interested in the transaction as fair, competitive, and commercially reasonable and no less favorable to the Company than a comparable Hotel Management Agreement between unaffiliated parties under the same circumstances.

The foregoing descriptions of the Purchase and Sale Agreement, Assignment Agreement, Ground Lease, Loan and Hotel Management Agreement are only summaries and are qualified in their entirety by reference to the complete text of the Purchase and Sale Agreement, Assignment Agreement, Ground Lease, Promissory Note, Mortgage and Hotel Management Agreement, which are attached as Exhibits 10.1 - 10.2 , 10.2, 10.3, 10.4, 10.5 and 10.6, respectively, to this Current Report on Form 8-K, and are each incorporated by reference herein.

Item 8.01 Other Events.

Determination of Estimated Per Share NAVs

On June 9, 2021, the Board, at the recommendation of the Audit Committee of the Board (the “Committee”), comprised solely of independent directors, unanimously approved and established the Estimated Per Share NAVs. The Estimated Per Share NAVs are based on the estimated value of the Company’s assets less the estimated value of the Company’s liabilities, divided by the approximate number of shares outstanding on a fully diluted basis, calculated as of March 31, 2021 (the “Valuation Date”). The Company is providing the Estimated Per Share NAVs to assist broker-dealers in connection with their obligations under National Association of Securities Dealers Conduct Rule 2340, as required by the Financial Industry Regulatory Authority (“FINRA”), with respect to customer account statements. This valuation was performed in accordance with the provisions of Practice Guideline 2013-01, *Valuations of Publicly Registered Non-Listed REITs*, issued by the Institute for Portfolio Alternatives (formerly known as the Investment Program Association) (the “IPA”) in April 2013 (the “IPA Valuation Guidelines”), in addition to guidance from the U.S. Securities and Exchange Commission (the “SEC”). The Company believes that there were no material changes between the Valuation Date and the date of this filing that would impact the Estimated Per Share NAVs.

The Committee, pursuant to authority delegated by the Board, was responsible for the oversight of the valuation process, including the review and approval of the valuation process and methodology used to determine the Company’s Estimated Per Share

NAVs, the consistency of the valuation and appraisal methodologies with real estate industry standards and practices and the reasonableness of the assumptions used in the valuations and appraisals.

The Estimated Per Share NAVs were determined after consultation with our advisor, Procaccianti Hotel Advisors, LLC (“PHA,” or, alternatively, our “Advisor”), and Robert A. Stanger & Co, Inc. (“Stanger”), an independent third-party valuation firm. The engagement of Stanger was approved by the Committee. Stanger prepared appraisal reports (collectively, the “Appraisal Reports”) that summarized key information and assumptions and provided an appraised value for each of the four properties (collectively, the “Appraised Properties”) in the Company’s portfolio as of March 31, 2021. Stanger also prepared a NAV report (the “NAV Report”) that estimates the NAV per share of each of the Company’s K-I Shares, K Shares, K-T Shares, A Shares, and B Shares. The NAV Report relied upon: (i) the Appraisal Reports for the Appraised Properties; (ii) Stanger’s estimate of the Company’s secured notes payable; (iii) Stanger’s estimate of the six percent per annum dividend rate (for periods prior to March 31, 2020) and seven percent per annum dividend rate (for periods on and after March 31, 2020) on a stated value of \$10.00 per share due to holders of Class K Shares, Class K-I Shares and Class K-T Shares as of March 31, 2021 (the “K Share Hurdle”) and (iv) the Advisor’s estimate of the value of the Company’s other assets and liabilities, to calculate each of the Estimated Per Share NAVs of the Company’s common and capital stock, and such other reviews as deemed necessary by Stanger. The process for estimating the value of the Company’s assets and liabilities was performed in accordance with the provisions of the IPA Valuation Guidelines.

Upon the Committee’s receipt and review of the Appraisal Reports and the NAV Report (collectively, the “Reports”), the Committee recommended to the Board: (i) \$9.77 as the estimated per share NAV per K-I Share; (ii) \$9.85 as the estimated per share NAV per K Share; (iii) \$9.85 as the estimated per share NAV per K-T Share; (iv) \$0.00 as the estimated per share NAV per A Share; and (v) \$0.00 as the estimated per share NAV per B Share, each as of March 31, 2021. Upon the Board’s receipt and review of the Appraisal Reports and recommendation of the Committee, the Board approved the foregoing values as the Company’s Estimated Per Share NAVs.

The table below sets forth the calculation of the Company’s Estimated Per Share NAVs as of March 31, 2021, as well as the comparable calculation as of March 31, 2020. Certain amounts are reflected net of noncontrolling interests, as applicable.

Components of NAV	3/31/2021	3/31/2020
Real Estate	\$ 95,900,000	\$ 85,480,000
Mortgage Notes Payable	(53,945,139)	(49,874,504)
Other Assets	13,722,346	9,739,275
Other Liabilities	(2,385,106)	(2,733,717)
Noncontrolling Interest	(7,192,688)	(7,446,348)
Net Asset Value	<u>\$ 46,099,413</u>	<u>\$ 35,164,706</u>
Note:		
Class K-I Shares (1)		
NAV	\$ 8,048,355	\$ 5,400,689
Shares Outstanding	<u>823,558</u>	<u>631,699</u>
NAV Per Share	<u>\$ 9.77</u>	<u>\$ 8.55</u>
Class K Shares (1)		
NAV	\$ 37,580,599	\$ 29,352,997
Shares Outstanding	<u>3,815,367</u>	<u>3,429,862</u>
NAV Per Share	<u>\$ 9.85</u>	<u>\$ 8.56</u>
Class K-T Shares (1)		
NAV	\$ 470,458	\$ 411,019
Shares Outstanding	<u>47,769</u>	<u>47,989</u>
NAV Per Share	<u>\$ 9.85</u>	<u>\$ 8.56</u>
Class A Shares		
NAV	\$ 0	\$ 0
Shares Outstanding	<u>581,410</u>	<u>537,410</u>
NAV Per Share	<u>\$ 0.00</u>	<u>\$ 0.00</u>
Class B Shares		

NAV	\$	0	\$	0
Shares Outstanding		125,000		125,000
NAV Per Share	\$	0.00	\$	0.00

In general, because the proceeds from the sale of A Shares are used to pay organization and offering expenses of K Shares, K-I Shares (1) and K-T Shares, the value of each of the K Shares, K-I Shares and K-T Shares is higher than if such shares paid their associated organization and offering expenses.

Methodology and Key Assumptions

In determining the Estimated Per Share NAVs, the Board considered the recommendation of the Committee, the Reports provided by Stanger and information provided by the Advisor. The Company's goal in calculating the Estimated Per Share NAVs is to arrive at a value that is reasonable and supportable using what the Committee and the Board each deems to be appropriate valuation methodologies and assumptions.

FINRA's current rules provide no guidance on the methodology an issuer must use to determine its estimated per share NAV. As with any valuation methodology, the methodologies used are based upon a number of estimates and assumptions that may not be accurate or complete. Different parties with different assumptions and estimates could derive a different estimated per share NAV, and these differences could be significant. The Estimated Per Share NAVs are not audited and does not represent the fair value of the Company's assets less its liabilities according to U.S. generally accepted accounting principles ("GAAP"), nor does it represent a liquidation value of the Company's assets and liabilities or the amount the Company's shares of common stock would trade at on a national securities exchange. The estimated asset values may not, however, represent current market value or book value. The estimated value of the Appraised Properties do not necessarily represent the value the Company would receive or accept if the assets were marketed for sale. The Estimated Per Share NAVs do not reflect a discount for the fact that the Company is externally managed, nor does it reflect a real estate portfolio premium/discount compared to the sum of the individual property values. The Estimated Per Share NAVs also do not take into account estimated disposition costs and fees for real estate properties that are not held for sale.

The outbreak of the COVID-19, declared by the World Health Organization as a global pandemic on March 11, 2020, has caused and is continuing to cause heightened uncertainty in both local and global market conditions. The effect COVID-19 will have on the real estate markets generally, and on the hospitality industry, will depend in part on both the scale and longevity of the pandemic. While market activity is being impacted in most sectors, at this stage hospitality and retail sectors have been most significantly impacted due to the increased response by local and global authorities, including shelter in place orders, restriction of travel and growing international concern. Although the Estimated Per Share NAV conclusions prepared by Stanger and subsequently determined by the Board are based on the information available at March 31, 2021, previous market information available on March 31, 2021 that was used for comparison purposes is now less reliable to inform opinions of value. The changing responses to COVID-19 create an unprecedented set of circumstances on which to base a judgment. Consequently, less certainty – and a higher degree of caution – should be attached to the Estimated Per Share NAVs than would normally be the case.

Independent Valuation Firm

Stanger was selected by the Committee to appraise and provide a value on the four Appraised Properties. Stanger is engaged in the business of appraising commercial real estate properties and is not affiliated with the Company or the Advisor. The compensation the Company paid to Stanger related to the valuation is based on the scope of work and not on the appraised values of the Company's real estate properties. The appraisals were performed in accordance with the Code of Ethics and the Uniform Standards of Professional Appraisal Practice, or USPAP, the real estate appraisal industry standards created by The Appraisal Foundation. The Appraisal Reports were reviewed, approved, and signed by an individual with the professional designation of MAI licensed in the state where each real property is located. The use of the reports is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. In preparing its Reports, Stanger did not, and was not requested to, solicit third-party indications of interest for the Company's common stock in connection with possible purchases thereof or the acquisition of all or any part of the Company.

Stanger collected reasonably available material information that it deemed relevant in appraising the Company's real estate properties. Stanger relied in part on property-level information provided by the Advisor, including historical and projected operating revenues and expenses and information regarding recent or planned capital expenditures.

In conducting their investigation and analyses, Stanger took into account customary and accepted financial and commercial procedures and considerations as they deemed relevant. Although Stanger reviewed information supplied or otherwise made available by the Company or the Advisor for reasonableness, they assumed and relied upon the accuracy and completeness of all such information and of all information supplied or otherwise made available to them by any other party and did not independently verify any such information. Stanger has assumed that any operating or financial forecasts and other information and data provided to or otherwise reviewed by or discussed with Stanger were reasonably prepared in good faith on bases reflecting the best currently available estimates and judgments of the Company's management, the Board, and/or the Advisor. Stanger relied on the Company to advise them promptly if any information previously provided became inaccurate or was required to be updated during the period of their review.

In performing its analyses, Stanger made numerous other assumptions as of various points in time with respect to industry performance, general business, economic, and regulatory conditions, and other matters, many of which are beyond their control and the Company's control. Stanger also made assumptions with respect to certain factual matters. For example, unless specifically informed to the contrary, Stanger assumed that the Company has clear and marketable title to each real estate property appraised, that no title defects exist, that any improvements were made in accordance with law, that no hazardous materials are present or were present previously, that no significant deed restrictions exist, and that no changes to zoning ordinances or regulations governing use, density, or shape are pending or being considered. Furthermore, Stanger's analyses, opinions, and conclusions were necessarily based upon market, economic, financial, and other circumstances and conditions existing as of or prior to the date of the Appraisal Reports, and any material change in such circumstances and conditions may affect Stanger's analyses and conclusions, including changes due to the ongoing Coronavirus (COVID-19) pandemic and related economic effects. The Appraisal Reports contain other assumptions, qualifications, and limitations that qualify the analyses, opinions, and conclusions set forth therein. Furthermore, the prices at which the Company's real estate properties may actually be sold could differ from Stanger's analyses.

Stanger is actively engaged in the business of appraising commercial real estate properties similar to those owned by the Company in connection with public security offerings, private placements, business combinations, and similar transactions. The Company does not believe that there are any material conflicts of interest between Stanger, on the one hand, and the Company, the Advisor, and their affiliates, on the other hand. The Company engaged Stanger, with approval from the Committee, to deliver its Reports to assist in the NAV calculation and Stanger received compensation for those efforts. In addition, the Company has agreed to indemnify Stanger against certain liabilities arising out of this engagement. In the three years prior to the date of this filing, Stanger was engaged by the Company in connection with the March 31, 2020, March 31, 2019 and the February 28, 2018 estimated per share NAVs for which Stanger was paid usual and customary fees. Stanger may from time to time in the future perform other services for the Company, so long as such other services do not adversely affect the independence of Stanger as certified in the applicable Appraisal Reports.

Although Stanger considered any comments received from the Company or the Advisor relating to their Reports, the final appraised values of the Company's real estate properties were determined by Stanger for the Appraised Properties. The Reports are addressed solely to the Committee to assist it in calculating and recommending to the Board an estimated per share NAV of the Company's common and capital stock. The Reports are not addressed to the public, may not be relied upon by any other person to establish an estimated per share NAV of the Company's common and capital stock, and do not constitute a recommendation to any person to purchase or sell any shares of the Company's common and capital stock.

The foregoing is a summary of the standard assumptions, qualifications, and limitations that generally apply to the Reports. The Reports, including the analysis, opinions, and conclusions set forth in such reports, are qualified by the assumptions, qualifications, and limitations set forth in the respective reports.

Real Estate Valuation

As described above, the Company engaged Stanger to provide an appraisal of the Appraised Properties consisting of four properties in the Company’s portfolio as of March 31, 2021. In preparing the Appraisal Report, Stanger, among other things:

- interviewed the Company’s officers or the Advisor’s personnel to obtain information relating to the physical condition of each Appraised Property, including known environmental conditions, status of ongoing or planned property additions and reconfigurations, and other factors for such leased properties;
- reviewed historical operating statements, revenue per available room, average daily rate, occupancy for the subject properties and competing properties, current tax information and a review of tax comparable properties, where appropriate; and
- reviewed the acquisition criteria and parameters used by real estate investors for properties similar to the subject Properties, including a search of real estate data sources and publications concerning real estate buyer's criteria, discussions with sources deemed appropriate, and a review of transaction data for properties similar to the Properties.

Stanger employed the Income Approach and Sales Comparison Approach, each described below, to estimate the value of the Appraised Properties. The Income Approach is based on the assumption that the value of a property is dependent upon the property’s ability to produce income. In the Income Approach, a discounted cash flow (“DCF”) analysis was used to determine the value of the fee simple or leased fee estate, as applicable, in the Appraised Properties. The indicated value by the Income Approach represents the amount an investor may pay for the expectation of receiving the net cash flow from the property and the proceeds from the ultimate sale of the property.

The Sales Comparison Approach utilizes indices of value derived from actual or proposed sales of comparable properties to estimate the value of the subject Property. The appraiser analyzed such comparable sale data as was available to develop a market value conclusion for the subject Property.

Stanger prepared the Appraisal Reports, which summarize key inputs and assumptions, providing a value for each of the Appraised Properties using financial information provided by the Company and the Advisor. From such review, Stanger selected the appropriate terminal capitalization rate and discount rate in its DCF analysis and the appropriate price per room in its sales comparison analysis.

As of March 31, 2021, the Company owned an interest in four real estate assets. The total aggregate purchase price of these properties was approximately \$74.6 million. In addition, through the Valuation Date, the Company had invested \$1.7 million in capital improvements on these real estate assets since inception. As of the Valuation Date, the total value of the Appraised Properties at the Company’s respective ownership interest was approximately \$79.7 million. This represents an approximately 4.3% increase in the total value of the real estate assets over the aggregate purchase price and aggregate improvements. The following summarizes the key assumptions that were used in the discounted cash flow and direct capitalization analysis to arrive at the appraised value of the Appraised Properties:

	Range		Weighted Average
Terminal Capitalization Rate	8.25%	9.50%	8.81%
Discount Rate	10.00%	11.00%	10.57%
Income and Expense Growth	3.00%		3.00%

While the Company believes that Stanger’s assumptions and inputs are reasonable, a change in these assumptions and inputs would impact the calculation of the appraised value of the Appraised Properties. The table below illustrates the impact on the appraised values, before noncontrolling interest adjustments, if the terminal capitalization rates, discount rates and direct capitalization rates were adjusted by 25 basis points or 5.0%, assuming the value conclusion for each Appraised Property is based on the method being sensitized and all other factors remain unchanged:

Estimated Impact to Appraised Values Due to:			
Increase 25 Basis Points	Decrease 25 Basis Points	Increase 5.0%	Decrease 5.0%

Terminal Capitalization Rate	\$ (1,270,173)	\$ 1,323,319	\$ (2,182,787)	\$ 2,348,131
Discount Rate	\$ (1,619,867)	\$ 1,634,506	\$ (3,381,937)	\$ 3,492,099

Loan Valuation

Values for the Company’s consolidated secured notes payable (the “Secured Notes Payable”) were estimated by Stanger using a discounted cash flow analysis, which used inputs based on the remaining loan terms and estimated current market interest rates for notes payable with similar characteristics, including remaining loan term, loan-to-value ratios, debt-service-coverage ratios, prepayment terms, and collateral property attributes. The current market interest rate was generally determined based on market rates for available comparable debt. The estimated current market interest rates ranged from 3.06% to 6.60% for the Secured Notes Payable.

As of March 31, 2021, Stanger’s estimated fair value of the Company’s Secured Notes Payable was \$53.9 million, before noncontrolling interest adjustments. The weighted-average discount rate applied to the future estimated debt payments of the Secured Notes Payable was approximately 5.33%.

While the Company believes that Stanger’s assumptions and inputs are reasonable, a change in these assumptions and inputs would impact the calculation of the estimated value of the Company’s Secured Notes Payable. The table below illustrates the impact on the estimated value of the Secured Notes Payable, before noncontrolling interest adjustments, if the market interest rate of the Secured Notes Payable were adjusted by 25 basis points or 5.0%, and assuming all other factors remain unchanged:

Estimated Impact to Fair Market Value of the Company’s Secured Notes due to:			
Decrease	Increase	Decrease	Increase
25 Basis Points	25 Basis Points	5.0%	5.0%
(\$319,800)	\$332,500	(\$396,500)	\$401,500

Cash, Other Assets, Other Liabilities and Credit Facility

The fair value of the Company’s cash, other assets and other liabilities were estimated by the Advisor to approximate carrying value as of the Valuation Date.

The carrying value of a majority of the Company’s other assets and liabilities are considered to equal their fair value due to their short maturities or liquid nature. Certain balances, such as intangible assets and liabilities and deferred financing costs, have been eliminated for the purpose of the valuation due to the fact that the value of those balances were already considered in the valuation of the respective investments.

Different parties using different assumptions and estimates could derive different estimated per share NAVs, and these differences could be significant. The value of the Company’s shares will fluctuate over time in response to developments related to individual assets in the Company’s portfolio and the management of those assets and in response to the real estate and finance markets.

Common Share Preferred Return

The Estimated Per Share NAV was calculated inclusive of the K Share Hurdle to each share class, net of any distributions made, from inception of the Company through the Valuation Date.

The Board’s Determination of the Estimated Per Share NAVs

Based upon a review of the Reports provided by Stanger, upon the recommendation of the Committee, the Board estimated the per share NAV for (i) the K-I Shares to be \$9.77; (ii) the K Shares to be \$9.85; (iii) the K-T Shares to be \$9.85; (iv) the A Shares to be \$0.00; and (v) the B Shares to be \$0.00.

Limitations of Estimated Per Share NAVs

The various factors considered by the Board in determining the Estimated Per Share NAVs were based on a number of assumptions and estimates that may not be accurate or complete. As disclosed above, the Company is providing the Estimated Per Share NAVs to assist broker-dealers that participate, or participated, in the Company's public offering in meeting their customer account statement reporting obligations. As with any valuation methodology, the methodologies used are based upon a number of estimates and assumptions that may not be accurate or complete. Different parties with different assumptions and estimates could derive different estimated per share NAVs. The Estimated Per Share NAVs are not audited and do not represent the fair value of the Company's assets or liabilities according to GAAP.

Accordingly, with respect to the Estimated Per Share NAVs, the Company can give no assurance that:

- a stockholder would be able to resell his or her K-I Shares, K Shares and K-T Shares at the K Share Estimated Per Share NAVs;
 - a stockholder would ultimately realize distributions per share equal to the Company's Estimated Per Share NAV upon liquidation of the Company's assets and settlement of its liabilities or a sale of the Company;
 - the Company's K-I Shares, K Shares and K-T Shares would trade at the Estimated Per Share NAVs on a national securities exchange;
 - a different independent third-party appraiser or other third-party valuation firm would agree with the Company's Estimated Per Share NAVs; or
- the Estimated Per Share NAVs, or the methodology used to estimate the Company's Estimated Per Share NAVs, will be found by any regulatory authority to comply with ERISA, the Internal Revenue Code of 1986, as amended or other regulatory requirements. Similarly, the amount a stockholder may receive upon repurchase of his or her shares, if he or she participates in the Company's share repurchase program, may be greater than or less than the amount a stockholder paid for the shares, regardless of any increase in the underlying value of any assets owned by the Company.

The Estimated Per Share NAVs are based on the estimated value of the Company's assets less the estimated value of the Company's liabilities divided by the number of shares outstanding on an adjusted fully diluted basis, calculated as of March 31, 2021.

Further, the value of the Company's shares will fluctuate over time as a result of, among other things, developments related to individual assets and responses to the real estate and capital markets. The Estimated Per Share NAVs do not reflect a discount for the fact that the Company is externally managed, nor do they reflect a real estate portfolio premium/discount versus the sum of the individual property values. The Estimated Per Share NAVs also do not take into account estimated disposition costs and fees for real estate properties that are not held for sale. The Company currently expects to utilize an independent valuation firm to update the Estimated Per Share NAVs as of March 31, 2021, in accordance with the IPA Valuation Guidelines, but is not required to update the Estimated Per Share NAVs more frequently than annually.

On April 7, 2020, in response to the global pandemic of the novel coronavirus (COVID-19), the Board approved the temporary suspension of the sale of shares in the Company's public offering, effective April 7, 2020, and of its distribution reinvestment plan, effective April 17, 2020. On June 10, 2020, our board of directors unanimously approved the resumption of the acceptance of subscriptions and the resumption of the operation of the DRIP.

The Board expects to modify the prices at which K Shares, K-I Shares and K-T Shares are offered pursuant to the public offering to reflect the updated Estimated Per Share NAVs. The decision to recommence selling shares of the Company's common stock in the public offering and new offering prices has been approved by the Board and will commence effective with a future announcement by the Company in a prospectus supplement.

Revised Public Offering Share Prices

Commencing on June 10, 2021, the offering price per share of the K Shares will be \$9.85 per K Share, the offering price per share of the K-I Shares will be \$9.09 per K-I Share (which includes a 7% discount as no commission is payable with respect to such shares) and offering price per share of the K-T Shares will be \$9.85 per K-T Share.

All subscriptions for shares in the public offering that are received in good order and fully funded by the close of business on June 9, 2021 will be processed using the \$8.56 per K Share public offering price, \$7.95 per K-I Share public offering price and \$8.56 per K-T Share public offering price; all subscriptions for shares in the public offering received and/or funded after the close of business on June 9, 2021 will be processed using a \$9.85 per K Share public offering price, \$9.09 per K-I Share public offering price and \$9.85 per K-T Share public offering price.

Revised Purchase Prices under the Distribution Reinvestment Plan

The Board determined that commencing on the date of the next monthly DRIP offering, the DRIP offering price per share of each of the K Shares, the K-I Shares and the K-T Shares will be \$9.36 per share. As provided under the DRIP, a participant may terminate or modify his or her participation in the DRIP at any time without penalty by delivering a written notice to the Company.

Any Estimated Per Share NAV approved by the Board in the future may be higher or lower than the most recently disclosed Estimated Per Share NAV for each of the K Shares, K-I Shares and K-T Shares, which may cause the purchase prices under the DRIP to increase or decrease accordingly. The prices under the DRIP are not a representation, warranty or guarantee that (i) a stockholder would be able to realize such per share amounts if such stockholder attempts to sell his or her shares; (ii) a stockholder would ultimately realize distributions per share equal to such per share amounts upon the liquidation or sale of the Company; (iii) shares of the Company's common stock would trade at such per share amounts on a national securities exchange; or (iv) a third party would offer such per share amounts in an arm's-length transaction to purchase all or substantially all of the Company's shares of common stock.

Revised Repurchase Prices under the Share Repurchase Program

The Company's amended and restated share repurchase program (the "Share Repurchase Program") provides that the price for shares repurchased under the Share Repurchase Program will be a percentage of the most recent Estimated Per Share NAVs of each share class, as adjusted based on a stockholder's relevant holding period (in each case, as adjusted for any stock dividends, combinations, splits, recapitalizations and the like); provided, however, that repurchases for death and qualifying disabilities of stockholders are repurchased at a repurchase price equal to 100% of the applicable Estimated Per Share NAV of each share class. The Board's determination of the estimated values of each of the K Shares, K-I Shares and K-T Shares shall serve as the most recent estimated value for K Shares, K-I Shares, and K-T Shares for purposes of the Share Repurchase Program, effective June 10, 2021.

For a full description of the Share Repurchase Program, please see the Company's most recent prospectus.

Forward-Looking Statements

Certain statements contained in this Current Report on Form 8-K, other than historical facts, may be considered forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These statements include, but are not limited to, statements related to the Company's expectations regarding the performance of its business and the Estimated Per Share NAVs of the Company's common and capital stock. Stanger relied on forward-looking information, some of which was provided by or on behalf of the Company, in preparing its valuation materials. Therefore, neither such statements nor Stanger's valuation materials are intended to, nor shall they, serve as a guarantee of the Company's performance in future periods. You can identify these forward-looking statements by the use of words such as "outlook," "believes," "expects," "potential," "continues," "may," "will," "should," "seeks," "approximately," "projects," "predicts," "intends," "plans," "estimates," "anticipates" or the negative version of these words or other comparable words. Such forward-looking statements are subject to various risks and uncertainties, including those described under the section entitled "Risk Factors" in the Company's Annual Report on Form 10-K for the year ended December 31, 2020, as updated by the Company's subsequent Quarterly Report on Form 10-Q for the period ended March 31, 2021 filed with the SEC. Accordingly, there are or will be important factors that could cause actual outcomes or results to differ materially from those indicated in these statements. These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this Current Report on Form 8-K and in the Company's other filings with the SEC. The Company undertakes no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. Actual events may cause the value and returns on the Company's investments to be less than that used for purposes of the Company's Estimated Per Share NAVs.

Item 9.01 - Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
<u>10.1</u>	<u>Purchase and Sale Agreement, as amended, dated as of April 28, 2021, by and between The Procaccianti Group, LLC, as Purchaser, and Pride One Cherry Tree, LLC and IPN-Pride Investment Holdings, LLC, collectively as Seller.</u>
<u>10.2</u>	<u>Assignment Agreement, dated as of June 3, 2021, by and between The Procaccianti Group, LLC and PHR OP Lender Sub, LLC, collectively as Assignor, and PHR Cherry Propco, LLC, as Assignee.</u>
<u>10.3</u>	<u>Ground Lease, dated as of June 3, 2021, by and between PHR Cherry Propco, LLC, as Tenant, and Pride One Cherry Tree, LLC and IPN-Pride Investment Holdings, LLC, collectively as Landlord.</u>
<u>10.4</u>	<u>Promissory Note, dated as of June 3, 2021 by and between Pride One Cherry Tree, LLC and IPN-Pride Investment Holdings, LLC, collectively as Borrower and PHR OP Lender Sub, LLC, as Lender.</u>
<u>10.5</u>	<u>Mortgage, dated as of June 3, 2021, by and between Pride One Cherry Tree, LLC and IPN-Pride Investment Holdings, LLC, collectively as Mortgagor, and PHR OP Lender Sub, LLC, as Mortgagee.</u>
<u>10.6</u>	<u>Hotel Management Agreement, dated as of June 3, 2021, by and between PHR Cherry Opco Sub, as Owner and LLC and PHR Cherry Tree Hotel Manager, LLC, as Manager.</u>
<u>99.1</u>	<u>Consent of Robert A. Stanger & Co., Inc.</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Current Report to be signed on its behalf by the undersigned, thereunto duly authorized.

PROCACCIANTI HOTEL REIT, INC.

Date: June 9, 2021

By: /s/ Gregory Vickowski

Gregory Vickowski
Chief Financial Officer

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made as of the 28th day of April, 2021, by and between PRIDE ONE CHERRY TREE, LLC, an Ohio limited liability company, and IPN-PRIDE INVESTMENT HOLDINGS, LLC, an Ohio limited liability company (collectively the “**Seller**”), and THE PROCACCANTI GROUP, LLC, a Rhode Island limited liability company (“**Buyer**”), with reference to the following:

RECITALS

A. Seller is the owner of fee interest in the Hotel Units (as hereinafter defined) on which is located an approximately 76-room hotel known as the Cherry Tree Inn and Suites located at 2345 N. US 31 North, East Bay Township, Grand Traverse County, Michigan (the “**Hotel**”), and certain other property.

B. Seller and Buyer desire to enter into the transactions hereinafter described upon and subject to the terms and conditions hereinafter set forth.

C. Subject to the terms and conditions set forth herein, as of the Initial Closing, Seller and Buyer shall enter into the Ground Lease (as hereinafter defined), and as of the Final Closing, Seller and Buyer will consummate the sale of the Property as contemplated herein and terminate the Ground Lease, and thereafter Buyer will become the fee owner of the Property, as set forth herein.

NOW, THEREFORE, in consideration of the representations, warranties, agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE I.

Definitions

1.1 **Definitions.** The above recitals are incorporated herein by reference as if fully rewritten below. The following terms shall have the meanings indicated:

(a) “**Affiliate**” - With respect to any entity, any other entity or person that controls, is controlled by, or is under common control with such entity in question. For purposes hereof, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity or the power to veto major policy decisions of any such entity, whether through the ownership of voting securities, by contract, or otherwise.

(b) “**Bookings**” – Contracts or reservations for the use or occupancy of guest rooms and meeting and banquet facilities of the Hotel.

(c) “**Cash on Hand**” – Any and all money in cash register tills and house banks, and all checks, travelers’ checks, and bank drafts paid by guests of the Hotel and located at the Hotel Property as of 11:59 p.m. on the date prior to the Closing Date.

(d) “**Condominium**” – Cherry Tree Condominium

(e) “**Condominium Association**” – CHERRY TREE OWNERS’ ASSOCIATION, a Michigan non-profit corporation.

(f) “**Condominium Documents**” - Collectively, the Master Deed dated July 25 2006, recorded August 4, 2006, as document 2006C-0067, Grand Traverse County Records, the articles of incorporation and by-laws of the Condominium

Association, any rules and regulations of the Condominium and the Board of Directors, the Cherry Tree Condominium, Grand Traverse County Condominium Subdivision Plan No. 317, and any and all other documentation related to the proper formation of the condominium regime established under applicable Law.

(g) **“Data Rules”** means shall mean any federal, state or local law, statute, ordinance, code, order, decrees, or other governmental rule, regulation or requirement, with respect to the collection, storage, use, processing and transfer of the personal information (including payment and billing information) of Hotel guests in Seller’s or Hotel Manager’s possession, including data protection laws, privacy laws, information security regulations, and security breach notification rules.

(h) **“Deposits”** – All deposits under or with respect to Bookings, whether in cash or otherwise.

(i) **“Effective Date”** – the last date upon which this Agreement is executed by Seller or Buyer as evidenced by the dates below the parties’ signatures on this Agreement, which Effective Date shall be inserted in the first paragraph of this Agreement by the last party to sign this Agreement.

(j) **“Ground Lease”** – A ground lease, the form of which to be reasonably agreed to by the parties during the Due Diligence Period, and upon such written agreement shall be deemed attached hereto as **Exhibit B**, under which Seller will convey leasehold title to and possession of the Property to Buyer and Buyer will lease and accept such leasehold title to the Property from Seller, all in accordance herewith and the Ground Lease.

(k) **“Hotel Guest Data”** – means all guest or customer profiles, contact information (e.g., addresses, phone numbers, facsimile numbers and email addresses), histories, preferences, reservation data and any other guest or customer information obtained or collected by Seller or Manager in the ordinary course of business from guests of the Hotel relating specifically to such guests’ stay at the Hotel. Hotel Guest Data does not include (i) any information maintained by Manager or its affiliates in their corporate databases that is not specific to guest stays at the Hotel, including, without limitation, websites, central reservation databases, operational databases and preferred guest programs of Manager or affiliates of Manager, and (ii) any data and information collected by Manager the transfer or disclosure of which is prohibited or to the extent that it is restricted by applicable laws.

(l) **“Hotel Intellectual Property Data and Information”** means (i) all information relating to the business and operations of the Hotel; (ii) Hotel Guest Data; (iii) all intellectual property and other proprietary rights and materials, including all U.S. and foreign, whether registered or unregistered, (A) trademarks (registered and unregistered) and trade names, including but not limited to “Cherry Tree Inn & Suites”, trade dress, service marks, any URL designations, internet protocol addresses and domain names, logos, all identifiers and accounts on content sharing platforms, including, but not limited to Facebook, Twitter, Instagram, Pinterest and Trip Advisor, and other source indicators, and all goodwill associated with the foregoing, (B) copyrightable works, copyrights (registered and unregistered), and registrations and applications for registration thereof, rights in software programs or applications (in both source code and object code form), databases and documentation, (C) designs, logos, artwork, packaging, copy, literary text, advertising material and promotion material of any sort.

(m) **“Hotel Manager”** - Riley Hotel Group LLC.

(n) **“Initial Closing”** – The consummation of Seller, as lessor, and Buyer, as lessee, entering into the Ground Lease.

(o) **“Management Agreement”** - That certain Management Agreement dated May 3, 2008 by and between Seller and Hotel Manager.

(p) **“Title Policy”** - The extended coverage ALTA Owner’s Policy of Title Insurance (or such other comparable form of title insurance policy as is available in the jurisdiction in which the Property is located) issued by the Title Company and insuring in the amount of the Purchase Price that, as of the Initial Closing, leasehold title to the Real Property is vested in Buyer subject only to the Permitted Exceptions, and the so-called “pre-printed” standard exceptions; provided, however, in connection with the Final Closing, the date of such Title Policy shall be dated down to the date of the recording of the Deed and modified to insure fee simple title to the Real Property.

(q) “**Transaction Documents**” - Collectively, this Agreement and the documents executed by Seller and Buyer in connection with the transaction described in this Agreement.

ARTICLE II.
Purchase and Sale of Property

2.1 **Purchase and Sale.** Seller agrees to convey, transfer and assign, and Buyer agrees to acquire, accept and assume, all of Seller’s right, title and interest in, to and with respect to the following, on the terms, conditions and provisions set forth in this Agreement:

(a) **Real Property.** All of Seller’s right, title and interest in and to those certain condominium units more particularly described on **Exhibit A** attached hereto in a condominium project commonly known as Cherry Tree Condominium, a condominium development evidenced by a Master Deed dated July 25, 2006 and recorded August 4, 2006, as document 2006C-00067, Grand Traverse County Records (the “**Condominium**”), as evidenced by the Cherry Tree Condominium, Grand Traverse County Condominium Subdivision Plan No. 317, together with all right, title and interest of Seller as “Developer” or an “Owner” under the Condominium Documents (including any appurtenant interest in the common elements thereunder), together with all strips and gores, rights of way, privileges and appurtenances pertaining thereto, including all right, title and interest of Seller, if any, in and to the land lying in the bed of any street, public right-of-way, or highway in front of or adjoining the land to the center line thereof, all water and mineral rights, entitlements, development rights and all easements, rights and other interests appurtenant thereto (collectively, the “**Hotel Units**”), and all buildings, structures and other improvements located within or affixed to the Hotel Units and all fixtures therein which constitute real property under applicable Laws, subject to the Condominium Documents, including, without limitation, the Hotel (collectively, the “**Improvements**”). The Hotel Units and the Improvements are sometimes referred to hereinafter together as the “**Hotel Property**.”

(b) **Tangible Personal Property.** All tangible personal property owned by Seller and located on or used in connection with the ownership, maintenance, or operation of the Hotel, including, without limitation, fixtures, furniture and furnishings (collectively “**FF&E**”), operating supplies and equipment (collectively “**OS&E**”) fittings, equipment, machinery, apparatus, signage, appliances, draperies, carpeting, keys, inventory and consumables (including food, beverages, and other goods offered for sale at the Hotel), a van, other engineering, maintenance, cleaning and housekeeping supplies of all kinds that are on hand on the date of this Agreement, subject to such depletion and restocking as shall occur and be made in the normal course of business and in accordance with Seller’s present standards and practices), sheets, towels, linens, toiletries, china, dishes, glassware, flatware, cookware, cooking utensils, uniforms, serving utensils, serving carts, serving trays, decorative items and all other equipment, fixtures, furnishings or other items in guest rooms or other areas of the Hotel, historical information and items of historical interest, sculptures and works of art, maintenance equipment, and any other items presently located or used at the Hotel and belonging to Seller, all plans, drawings, specifications, blueprints, surveys, environmental studies, engineering reports, and other technical information in Seller’s possession or under its control concerning the design, anticipated remodel, construction, ownership, use, maintenance, service, or operation of the Hotel (collectively, with FF&E and OS&E, the “**Tangible Personal Property**”).

(c) **Intangible Property.** All intangible rights of Seller relating to the Hotel, including (i) contracts for service or maintenance, including, but not limited to, elevator, PMS, HVAC, snow removal, landscaping services, laundry equipment agreements, distribution agreements, supply agreements, vending agreements, royalty or music licensing agreements, and cable or satellite television or telecommunications agreements and equipment leases with respect to the van, copier and postage machine (“**Contracts**”) each to the extent assignable and to the extent Buyer elects to take an assignment of same, as hereinafter provided; (ii) warranties and guaranties made by or received from a third party with respect to any furnishings, fixtures, equipment or improvements (“**Warranties and Guaranties**”) to the extent assignable by Seller; (iii) permits, authorizations, approvals, and certificates of occupancy issued, approved or granted by any governmental entity in connection with the Hotel (“**Permits**”) to the extent assignable by Seller; (iv) Cash on Hand (as defined herein) as of the Closing Date; (v) all electronic files, data and information, software licenses, telephone numbers, computer data bases, internet websites, and reservation services, telecommunications or information technology systems or programs used in the operation of the Property, including, without limitation, any passcodes, passwords and access codes necessary to operate any of the same, for the Hotel to the extent transferable; (vi) the Hotel Intellectual Property Data and Information, including all goodwill associated therewith; (vii) Bookings (as defined herein); (viii) all rights of Seller under the Condominium Documents, including, without limitation, all documents relating to the Condominium Association (the “**Association Documents**”) established pursuant to the Condominium Documents as management agent or otherwise, and (ix) other items of intangible personal property relating to the ownership or operation of the Hotel and owned by Seller whether on paper, electronic format, DVD or CD-Rom (collectively, the

“**Intangible Hotel Assets**” and together with the Tangible Personal Property, the “**Personal Property**” and together with the Hotel Property, the “**Property**”).

(d) Notwithstanding anything to the contrary in this Agreement, the property, assets, rights and interests set forth below (collectively, the “**Excluded Property**”) shall not be transferred, assigned or conveyed to Buyer, and shall be excluded from the Property: (i) all property owned by or belonging to tenants, Hotel guests, Hotel Manager, or other users or occupants of the Property, (ii) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, (iii) any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property and/or Seller, or which are subject to a confidentiality agreement, (iv) any software licenses used by Seller in the corporate offices of Seller, (v) the personnel files and employment records for all employees of the Property (other than names, job descriptions, description of employment and wage/salary, and benefits information), (vi) other than Hotel Guest Data, all data and information relating to guests or customers of any hotel or lodging property (including condominium or interval ownership properties), (vii) financials or tax returns of Seller or any affiliates of Seller (i.e., other than with respect to the operation of the Property), and (viii) any property that is subject to equipment leases.

2.2 **Purchase Price.** Subject to the adjustments and prorations described in this Agreement, the purchase price of the Property (the “**Purchase Price**”) shall be Fifteen Million and 00/100 (\$15,000,000.00). Buyer shall pay the Purchase Price as follows:

(a) **Earnest Money.** Within three (3) business days after the execution and delivery of this Agreement, Buyer shall deposit Five Hundred Thousand Dollars (\$500,000.00) (the “**Initial Deposit**”) with First American Title Insurance Company (the “**Title Company**”) located at Six Concourse Parkway, Suite 2000, Atlanta, Georgia 30328, Attention: Karen Kirspel (the “**Escrow Agent**”). The Deposit, together with the Second Deposit, and any other deposits, to the extent delivered by Buyer in accordance with the terms of this Agreement, is referred to herein collectively as the “**Earnest Money**”. The Earnest Money shall be held in an interest bearing account. Except as otherwise provided for in this Agreement, the Earnest Money shall be non-refundable to Buyer and payable to Seller upon the termination of this Agreement, or otherwise applied to the Purchase Price at the Final Closing.

(b) **Balance.** Buyer shall pay the balance of the Purchase Price, plus or minus prorations and adjustments as provided in this Agreement, at the Final Closing in immediately available funds by wire transfer.

(c) **Purchase Price Allocation.** Prior to the date hereof, Seller has provided Buyer with a statement of Seller’s proposed allocation of the Purchase Price among the Real Property, the Personal Property and other customary items either party hereto may request to be allocated (the “**Allocation**”), and the parties shall use good faith efforts to agree to such Allocation, and if agreed upon in writing such Allocation shall be deemed attached hereto as **Exhibit C**. If the Allocation cannot be agreed upon, each party may use its own determination and bear any consequences related thereto and Buyer’s allocation shall be utilized in calculating transfer, sales and similar tax and related filings under this Agreement; and Buyer’s allocation shall control with respect to the amount to be stated on any transfer tax declaration submitted in connection with the Deed; provided, however, Buyer agrees that neither the Deed nor any transfer tax declaration or real estate transfer tax affidavit submitted in connection with the Deed shall include an allocation to real property of more than \$13,000,000. If the parties are able to agree upon an Allocation, Seller and Buyer agree to (i) be bound by the Allocation and (ii) act in accordance with the Allocation in the preparation of financial statements and filing of all tax returns. Buyer and Seller each agrees to provide the other promptly with any other information required to complete Form 8594. If agreed upon, Buyer and Seller each agrees to file Internal Revenue Service Form 8594, and all federal, state, local and foreign Tax Returns, in accordance with the Allocation above. Notwithstanding anything herein to the contrary, for purposes of the settlement statement at Closing, Buyer agrees to only identify two categories of assets, real estate and non-real estate assets, for purposes of allocating the Purchase Price.

2.3 **Assumption of Liabilities.** Subject to Article VIII and, following the Initial Closing Date, further subject to the Ground Lease, Seller shall be responsible for, and shall pay in full, all debts and other payables of any kind that were incurred by Seller for goods received or services rendered prior to the Final Closing Date, and Buyer shall be responsible for, and shall pay in full, all debts and other payables of any kind that are incurred by Buyer for goods received or services rendered on or after the Final Closing

Date. Seller and Buyer covenant and agree to remit with reasonable promptness any such amounts due. Any liabilities of Seller that are not expressly assumed by Buyer pursuant to the terms of this Agreement and the terms of the Assignment and Assumption of Contracts, Leases, Hotel Intellectual Property Data and Information, Warranties and Guaranties and Permits to be executed and delivered at Closing shall remain with Seller.

2.4 **Buyer Financing.** The Property is currently encumbered by that certain Mortgage (Future Advance Mortgage) ("**Current Mortgage**") with respect to that certain loan ("**Current Loan**") from mBank ("**Current Lender**"). Seller and Buyer agree that it is the parties intention that, and Seller's obligation to enter into the Ground Lease is expressly conditioned upon, at the Initial Closing the following shall occur: (a) Seller and Buyer (or an affiliate thereof) ("**TPG Lender**") will enter into a loan in the principal amount of approximately \$7,500,000) secured by certain loan documents to be negotiated and agreed to during the Due Diligence Period, and upon such written agreement shall be deemed attached hereto as **Exhibit D** (the "**Refinance Documents**") wherein TPG Lender will provide a loan in the amount of approximately \$7,500,000 to Seller (the "**TPG Loan**"), (b) with the proceeds of the loan from the TPG Lender, Seller shall cause the Current Loan to be paid in full at the Initial Closing, and (c) Current Lender shall deliver into escrow, to be released upon the payment contemplated in subsection (b) all documents necessary to terminate its security interests in the Property ("**Release Documents**") to be released immediately (or otherwise insured over at the Initial Closing, and then released as soon as reasonably possible) upon payment of the Current Loan. At the Final Closing, Seller shall cause the payment in full of the loan evidenced by the Refinance Documents, which may be paid by proceeds from the closing of the transactions contemplated by this Agreement.

ARTICLE III. **Buyer's Review**

3.1 **Due Diligence Period.** Buyer shall have a period of time commencing upon the Effective Date of this Agreement and ending at 5:00 PM Eastern Time on the day that is thirty (30) days following the Effective Date hereof (the "**Due Diligence Period**"), within which to determine, in the exercise of Buyer's sole and absolute discretion, whether or not the Property is satisfactory and suitable to Buyer for Buyer's intended use of the Property. Seller will provide Buyer and its consultants and representatives reasonable access to the Property upon advance notice of at least 48 hours (which may be by email to Joseph Moffa at jmoffa@rileyhg.com) at reasonable times during the term of this Agreement, for all environmental, engineering and other physical inspections and tests as Buyer, at Buyer's sole cost and expense, desires to conduct ("**Due Diligence Examination**"). Buyer shall give Seller reasonable prior notices of its intention to conduct any inspections or tests, and Seller reserves the right to have a representative present in connection with any part of Buyer's Due Diligence Examination. Buyer covenants and agrees that in making any such inspections or tests, Buyer and its agents will not unreasonably interfere with the activities of Seller's employees, agents, invitees, hotel guests, or any persons providing service at the Property. Buyer expressly acknowledges that it may not be able to inspect certain Hotel room(s) to the extent Hotel guest(s) is(are) in occupancy.

Buyer covenants and agrees not to damage or destroy any portion of the Property in conducting its examinations and studies of the Property during the Due Diligence Examination, and shall restore any portion of the Property damaged by the conduct of Buyer, its agents or employees, to the condition such portion(s) of the Property were in immediately prior to such examinations or studies. Buyer hereby indemnifies Seller and its owners, beneficial owners and agents and holds Seller and its owners, beneficial owners and agents harmless against any and all claims, liens, (including, without limitation, mechanic's or materialmen's liens or claims of liens and reasonable attorneys' fees), demands, liabilities, losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees incurred, arising out of or resulting from any damage to the physical condition of the Property caused by Buyer's inspections, or injury to persons caused by Buyer's inspections, or liens created by any such work caused by activity of Buyer or any of its agents and representatives; provided, however, such indemnification by Buyer shall in no event apply to any claims, liens, demands, liabilities, losses, damages, costs or expenses resulting from (a) any pre-existing conditions at or in connection with any of the Property unless and to the extent any such condition was exacerbated by Buyer (and in such case of exacerbation, then Buyer shall indemnify Seller only to the extent of such exacerbation); or (b) the negligence or willful misconduct of Seller, its agents or representatives. Before entering upon the Property and prior to commencing any such tests, studies and investigations, Buyer shall furnish to Seller a certificate of insurance evidencing commercial general liability insurance coverage of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, such insurance insuring the person, firm or entity performing such tests, studies and investigations. The certificate of insurance shall list the Seller and Buyer as additional insureds thereunder. Such insurance coverage shall be issued by an insurance company licensed to do business in the state where the Property is located and shall include contractual liability coverage with respect to Buyer's indemnity obligations set forth in this Agreement (it being understood, however, that the availability

of such insurance shall not serve to limit or define the scope of Buyer's indemnity obligations under this Agreement in any manner whatsoever). The insurance certificate required herein shall also provide that the coverage may not be cancelled, non-renewed or reduced without at least ten (10) days' prior written notice to Seller. No inspection shall involve the taking of samples or other physically invasive procedures without the prior written consent of Seller, which consent Seller will not unreasonably withhold, condition or delay. The Buyer's obligations set forth herein shall survive any termination of this Agreement.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENTS NEITHER SELLER NOR ANY PARTY ACTING FOR OR ON BEHALF OF SELLER IS MAKING OR HAS, AT ANY TIME, MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO BUYER WHICH SELLER OR SELLER'S REPRESENTATIVES DID NOT CREATE OR PREPARE REGARDING THE PROPERTY, AND SUBJECT TO THE TRANSACTION DOCUMENTS AND THE EXPRESS TERMS OF THIS AGREEMENT, BUYER HEREBY RELEASES SELLER FROM ALL LIABILITY RELATING TO SAME. UPON CLOSING, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS." BUYER HAS NOT RELIED UPON NOR WILL RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER WITH RESPECT TO THE PROPERTY EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT. BUYER WILL CONDUCT SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY BUYER AS TO THE CONDITION OF THE PROPERTY AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER AND, SUBJECT TO THE TERMS OF THIS AGREEMENT AND ANY OTHER TRANSACTION DOCUMENT HEREBY RELEASES SELLER FROM ANY LIABILITY ARISING FROM SAME. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THIS TERMS OF THIS PARAGRAPH SHALL BE AS OF THE DATE HEREOF, AS OF THE DATE OF CLOSING AND SHALL SURVIVE CLOSING INDEFINITELY.

3.2 Review Documents. During the Due Diligence Period and continuing through the Final Closing, Seller shall be provided reasonable access (which may include being provided electronic data) to review Seller's books and records for purposes of assessing the business and general financial condition of the Hotel. Such review shall include all records in Seller's possession or control concerning the design, construction, remodeling, ownership, management, operation and maintenance of the Hotel ("**Review Documents**"), including the following:

- (a) Most recent existing title policies for the Hotel Property;
- (b) Seller's most recent Survey of the Hotel Property;
- (c) Utility bills for the previous 2 years;

(d) Real Estate and personal property tax bills for the previous 3 years and complete filings of any tax appeals;

- (e) Hotel Guest Data and reservation records for the Property;

(f) Condominium Documents and Association Documents, including, without limitation, the condominium association bylaws, any agreements between Seller and the Condominium Association and the condominium co-owners and the condominium association;

(g) Contracts, Warranties and Guaranties and Permits, including any Contracts which the Condominium Association is a party to;

(h) Plans, drawings and specifications relating to the Hotel Property;

(i) Property condition reports, asbestos reports, termite reports, engineering reports and environmental reports relating to the Hotel Property;

(j) Current report of the rental and rent ready status of each guest room;

(k) Report of known capital expenditures for the last three years showing dollar amounts and nature of expenditure by asset class, including any projects relating to replacement of appliances, furniture, carpeting, flooring, wall coverings, parking lot paving and roof or window replacements;

(l) Service records for HVAC, roof and other mechanical components of the buildings located at the Hotel Property for the past three (3) years;

(m) Operating statements, financial statements, income and expense statements, and balance sheets for Seller and the Condominium Association for the past three (3) years (collectively, "**Financial Statements**");

(n) General ledger of Seller and for the Condominium Association for the previous three (3) years and year to date;

(o) Copies of bank statements for Seller and the Condominium Association showing actual amounts of income deposited for the last complete calendar year and year to date for the current year;

(p) All financial information relating to the Condominium Association including all assessments and related information and all minutes of all board meetings for the Condominium Association;

(q) A schedule of all employees at the Hotel Property, including their position, rate of pay, any fringe benefits and employee handbooks;

(r) Copies of all current policies of insurance for the Hotel Property accompanied by loss runs for the previous five (5) year period;

(s) Copies of Innquest or other Property Management System ("PMS") and any central reservation service agreement or revenue management system agreements;

(t) Those documents and information set forth on **Exhibit E** attached hereto; and

(u) Such other documents and information in Seller's possession or control reasonably requested by Buyer.

The Seller's Review Documents are being made "as-is", for the convenience of Buyer, and without representation or warranty by Seller, except that Seller represents and warrants the truth and accuracy in all material respects of all Seller's Review Documents prepared by Seller or Hotel Manager, and to Seller's knowledge, the Seller's accountants or agents, and that Seller has no actual knowledge that such materials contain any information that was materially false or misleading as of the date of the applicable document/report.

3.3 Listing of Personal Property; Joint Inspection and Inventory. Within ten (10) days after the Effective Date of this Agreement, Seller shall provide to Buyer a true, correct and complete listing in all material respects of all of the tangible Personal

Property in the form currently maintained by Seller, ("**Personal Property Inventory**"). Buyer understands and acknowledges that certain items of Personal Property will change due to sales, depletion, restocking, substitutions and replacements made in the ordinary course of business between the Effective Date of this Agreement and the Initial Closing Date, and between the Initial Closing Date and the Final Closing Date, shall be subject to the terms of the Ground Lease. The parties agree to conduct a joint inspection and inventory of the tangible Personal Property on a mutually agreed date at least two (2) business days prior to the Initial Closing, if requested in writing by Buyer.

3.4 Confidentiality.

(a) Each party agrees to maintain in confidence, and not to disclose to third parties, the information contained in this Agreement or pertaining to the purchase and sale contemplated hereby and the information and data furnished or made available by Seller to Buyer, its agents and representatives in connection with the Property and the transactions contemplated by the Agreement, and shall treat such Review Documents with the same degree of care as it treats its own confidential information; provided, however, that each party, its agents and representatives may disclose such information and data (a) to such party's accountants, attorneys, consultants, investors, lenders and other advisors in connection with the transactions contemplated by this Agreement to the extent that such representatives reasonably need to know (in the disclosing party's reasonable discretion) such information and data in order to assist, and perform services on behalf of, Buyer in connection with the transactions contemplated by this Agreement, (b) to the extent required by any applicable statute, law, or regulation; and (c) in connection with any litigation that may arise between the parties related to the transactions contemplated by this Agreement. Buyer and Seller agree not to make any public announcement relating to the existence of this Agreement or the contemplated purchase and sale transaction, without the express written approval of the other party, until after the Final Closing (in the event Final Closing occurs). Notwithstanding the foregoing, Seller acknowledges and agrees that in the event Buyer or its assignees is required by applicable Law or governmental regulations applicable to it, Buyer or its assignee may disclose such information as it reasonably determines is necessary in connection with an offering of securities (whether by it, its Affiliates or any assignees of the same), including without limitation with respect to this Agreement (including disclosure of a copy of this Agreement in its entirety) and the transactions contemplated hereby and may contact or conduct negotiations with public officials, make any public announcements or issue press releases regarding this Agreement or the transactions contemplated hereby to any third party without the prior written consent of Seller.

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(b) In addition, Buyer and its representatives shall have the right, without any requirement to obtain the consent of Seller, to (i) review building department, health department and other local governmental authority records with respect to the Real Property and the operation of the Hotel (including, without limitation, for the preparation of (and due diligence required therefor) zoning reports, property condition reports, environmental assessment reports and other customary due diligence), and (ii) discuss with and apply to the applicable governmental authority for any licenses, permits and agreements necessary or desirable for Buyer's renovation and operation of the Hotel after the Initial Closing. Further, Buyer and its representatives shall have the right to communicate with the general manager, and any member of the executive management staff of the Hotel provided that any contact with such executive management staff member must be initiated through the general manager and Seller shall have the right to have a representative present at any meetings, phone calls or other communication with such staff member, and, after the expiration of the Due Diligence Period, Seller will, and shall cause Hotel Manager to, reasonably cooperate to provide Buyer (and its manager) reasonable access to interview the Hotel Employees for future employment at the Hotel.

3.5 Buyer's Right to Terminate Purchase Agreement. At any time prior to the expiration of the Due Diligence Period, and for any or no reason whatsoever, Buyer shall have the right to terminate this Agreement by delivery of written notice to Seller (the "**Buyer's Termination Right**"). In the event Buyer exercises the Buyer's Termination Right due to (i) an unacceptable environmental matter disclosed on a Phase I or Phase II Environmental Site Assessment and which Buyer provides specific reference to such matter to Seller in a written termination notice (an "**Environmental Termination Matter**"), or (ii) a title or survey matter pursuant to Section 4.4 below and which Buyer provides specific reference to such matter to Seller in a written termination notice (a "**Title or Survey Termination Matter**"), then the Initial Deposit shall be returned to Buyer and the parties shall be relieved of all further obligations hereunder, except for such items which expressly survive termination of this Agreement.

In the event Buyer exercises the Buyer's Termination Right for any reason other than (i) an Environmental Termination Matter, or (ii) a Title or Survey Termination Matter, then the Initial Deposit less \$150,000.00 (the "**Non-Refundable Money**") shall be returned to Buyer, Seller shall receive the remaining \$150,000.00 which shall be deemed earned by Seller, and the parties shall be relieved of all further obligations hereunder, except for such items which expressly survive termination of this Agreement. In the event Buyer fails to

properly and timely exercise the Buyer's Termination Right, upon the expiration of the Due Diligence Period (the "**Due Diligence Period Expiration Date**"), the Buyer's Termination Right shall be deemed waived, and within three (3) days following the Due Diligence Period Expiration Date, Buyer shall deposit an additional deposit in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) ("**Second Deposit**") with the Title Company, which shall be treated as part of the Earnest Money in all respects.

Notwithstanding anything herein to the contrary, if the final forms of the Ground Lease, Refinance Documents and Employee Lease Agreement cannot be agreed upon in writing by the parties prior to the expiration of the Due Diligence Period, then either party may terminate this Agreement prior to the expiration of the Due Diligence Period upon written notice to the other party, and Buyer shall receive a return of the Earnest Money (including the Non-Refundable Money), and the parties shall be relieved of all further obligations hereunder, except for such items which expressly survive termination of this Agreement.

ARTICLE IV. **Title Matters**

4.1 **Title Commitment.** With ten (10) days after the Effective Date of this Agreement, Buyer will use good faith efforts to obtain and upon receipt shall deliver to Seller a commitment for an ALTA form owner's policy of title insurance (the "**Title Policy**") to be issued by the Title Company, covering the Real Property, naming Buyer as the insured, stating the Purchase Price as the policy amount (the "**Title Commitment**"). Buyer shall also request the Title Company to deliver to Seller concurrently with the Title Commitment a legible copy of each document that is the basis for an exception to coverage in such Title Commitment (collectively, the "**Exception Documents**").

4.2 **UCC Searches.** Buyer shall promptly order after the Effective Date current searches of all Uniform Commercial Code financing statements and other liens filed with the appropriate government officials against Seller and the Property (the "**UCC Searches**"). If the UCC Searches reveal claims or liens encumbering all or any portion of the Property, then the cure provisions set forth in Section 4.4 shall apply.

4.3 **Survey.** Buyer may obtain an updated ALTA survey covering the Real Property (the "**Survey**"), which Survey shall be prepared by a duly licensed Michigan surveyor; provided, however, in order for Buyer to have the right to object to any survey matters as contemplated in Section 4.4, Buyer must engage a surveyor to survey the Property within five (5) days from the Effective Date, and, upon receipt, Buyer shall cause such Survey to be promptly delivered to Seller and the Title Company. The Survey shall be sufficient to permit the Title Company to delete the standard printed exception in the Title Policy pertaining to matters that would be disclosed by an accurate survey of the Property . The Survey shall contain a certification that complies with ALTA standards and is otherwise acceptable to Buyer and Title Company.

4.4 **Review.** Buyer shall have five (5) business days after receipt of the last of the Title Commitment, Exception Documents, UCC Searches and Survey (if timely ordered in accordance with this Agreement) within which to notify Seller in writing of any objections Buyer has to any matters appearing or referred to in the Title Commitment, Survey or UCC Searches (collectively, "**Title Objections**"). Any exceptions or other matters to which Buyer does not object in writing within such five (5) business day period shall be deemed to be permitted exceptions to Seller's title (the "**Permitted Exceptions**"). Seller shall have three (3) business days from its receipt of Buyer's Title Objections to notify Buyer (a) that it will, prior to the Final Closing Date, eliminate or remove, or cause the Title Company to delete, the Title Objections to which Buyer has objected or (b) that it declines to eliminate or remove, or cause the Title Company to delete, specified or all Title Objections to which Buyer objected. If Seller elects not to remove, eliminate or cause to be deleted all Title Objections, or fails to timely provide such election, Buyer may terminate this Agreement in its sole and absolute discretion and receive a return of the Earnest Money and the parties shall be relieved of all further obligations hereunder, except for such items which expressly survive termination of this Agreement; provided, however, the failure of Buyer to terminate this Agreement on or before the earlier of the expiration of five (5) Business Days after Seller's notice to Buyer as set forth above, and the expiration of the Due Diligence Period shall be deemed Buyer's election not to terminate this Agreement and such Title Objections that Seller has not agreed to eliminate or remove or cause the Title Company to delete shall be deemed Permitted Exceptions. If Seller agrees

in writing to take the actions necessary to eliminate or remove, or cause the Title Company to delete any Title Objections, then such exceptions shall not be Permitted Exceptions and Seller shall cause such Title Objections to be removed, eliminated or deleted prior to or at the Final Closing. Notwithstanding anything to the contrary contained herein, Seller agrees that the following shall not constitute Permitted Exceptions under any circumstances hereunder and shall be removed by Seller at or prior to the Initial Closing (collectively, the “**Mandatory Unpermitted Exceptions**”): (i) any judgment or mechanics or similar liens which may be removed in accordance with their terms by payment of a liquidated amount (or other means reasonably acceptable to the Title Company) which were created by or through the actions of Seller or its agent, (ii) any mortgages, deeds of trust or other security interests for any financing incurred by Seller other than the Refinance Documents as contemplated in Section 2.4, and (iii) taxes relating to any period prior to the Initial Closing Date which constitute exceptions to title which would be delinquent if unpaid at Initial Closing (and, if any such taxes are payable in installments, such obligation shall also apply to any such installments payable after the Initial Closing Date unless Buyer receives a credit for such taxes under Section 8.1).

4.5 Condominium Estoppel. Promptly following receipt of Buyer’s requested form of estoppel certificate (the “**Condo Association Estoppel Certificate**”), Seller shall deliver the same to the Condominium Association. Seller shall use commercially reasonable efforts to obtain on or prior to the Initial Closing Date an executed Condo Association Estoppel Certificate from the Condominium Association. Buyer shall be deemed to have approved the Condominium Association Estoppel Certificate so long as there are no material defaults specified therein; in the event that a material default is specified therein then Seller shall have the right, but not the obligation, to attempt to cure any such material default and Buyer shall be deemed to approve the Condo Association Estoppel Certificate provided such material default is cured within fourteen (14) days of receipt of the Condo Association Estoppel Certificate (and the Initial Closing Date shall be extended as necessary in order to give Seller the full benefit of such fourteen (14) day period). The failure of Seller to obtain the Condo Association Estoppel Certificate after exercising commercially reasonable efforts shall not be deemed a default or breach of Seller’s obligations under this Agreement, but is, however, subject to Section 4.5.

4.6 Estoppels. Seller will reasonably cooperate with Buyer’s efforts to obtain any estoppels Buyer may reasonably request in connection with the Contracts, or any Declaration of Covenants, Conditions or Restrictions (or similar title document, but excluding the Condominium Documents addressed in Section 4.5) (each individually an “**Estoppel**”, and collectively the “**Estoppels**”); provided, however, Seller shall not be obligated to incur any expense or fee to so obtain any Estoppels, and the failure of Buyer to obtain any such Estoppels shall be not a default by Seller hereunder nor a failure of a condition precedent to Initial Closing or the Final Closing.

ARTICLE V.

Other Obligations and Agreements

5.1 Exclusive Dealing. During the pendency of this Agreement, Seller agrees that it will not entertain, solicit or accept offers from any other prospective purchaser for the purchase of all or any portion of the Property.

5.2 Operation and Maintenance of Property Pending Initial Closing. Between the Effective Date of this Agreement and the Initial Closing Date, Seller agrees, to (i) operate the Hotel in a commercially reasonable manner consistent with how Seller has previously operated the Hotel; (ii) conduct its operation of the Hotel in the normal course of business and maintain its current relationships with suppliers, vendors and trade creditors, provide a level of employment at the Hotel sufficient for the normal operations of the Hotel as currently conducted; (iii) maintain all present utility services and insurance policies (including Seller’s current casualty deductible) for the Property; (iv) perform all of its obligations to be performed under the Condominium Documents and Contracts, and not enter into any modification or amendment of the Condominium Documents (without Buyer’s prior written consent) except as required to comply with the provisions hereof or the provisions of the Condominium Documents; (v) not enter into any new leases or occupancy agreements (except for rental of hotel rooms in the ordinary course of business) without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed prior to the expiration of the Due Diligence Period and in its sole discretion thereafter; (vi) except for purchase orders entered into in Seller’s ordinary course of business, not enter into any agreements or modify or cancel any Contracts without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; (vii) not sell or dispose of any inventory, supplies, equipment or other Personal Property without the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed prior to the expiration of the Due Diligence Period and in its sole discretion thereafter), subject to such depletion and replacement as shall occur and be made in the ordinary course of the operation of the Hotel and in accordance with Seller’s present standards and practices; (viii) not enter into any employment contract or agreement or establish or amend any “employee welfare benefit plan,” “employee pension benefit plan” or “fringe benefit plan” or any other plan or

arrangement of a similar nature with obligations that will survive the Initial Closing Date; (ix) promptly send Buyer copies of any notices from any governmental authority received by Seller concerning the Property; (x) make or cause to be made all repairs and replacements reasonably required with respect to any portion of the Property and maintain the Property in the same manner as Seller has maintained the Property prior to the Effective Date; (xi) not take any action or fail to take any action that may constitute a default by Seller under the terms of any agreement relating to the ownership, use, or operation of the Property; (xii) cause all guest rooms/suites vacant 1 or more days to be rent ready at the Initial Closing, including working appliances (if applicable), hardware, lighting and plumbing; and (xiii) not remove any appliances included with any of the guest units or suites without replacing it with a comparable replacement. Following the Initial Closing through the Final Closing, the operation and maintenance required with respect to the Property shall be governed by the Ground Lease.

5.3 Notification of Material Adverse Events. Seller shall promptly notify Buyer in writing of any event following the Effective Date hereof of which Seller is or becomes aware that will or is likely to have a material adverse effect on the business or financial of the Hotel or Seller's performance of its obligations under this Agreement.

5.4 Indemnity. Seller hereby indemnifies and holds Buyer harmless from and against (a) all third party claims, demands, losses, damages and expenses and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of or in connection with Seller's ownership and operation of the Property with respect to the period prior to the Final Closing (except to the extent assumed by Buyer in connection with the Initial Closing and/or Ground Lease), and (b) any material breach by Seller of any of its representations and warranties as set forth in Section 9.1 of this Agreement. Buyer hereby indemnifies and holds Seller harmless from and against (x) all third party claims, demands, losses, damages and expenses and costs including, but not limited to, reasonable attorneys' fees and expenses actually incurred, arising out of on in connection with Buyer's ownership and operation of the Property with respect to the period from and after the Final Closing Date (except as may be expressly set forth in the Ground Lease), and (y) any material breach by Buyer or its assignees of any of its representations and warranties as set forth in Section 9.2 of this Agreement. This Section 2.4 shall survive for the Survival Period.

5.5 Seller's Employees. All employees employed in connection with the Hotel will be terminated on the Final Closing Date. No employee of Seller shall be terminated by Buyer prior to the Final Closing Date, except with the prior written consent of Seller. At the Initial Closing, Buyer (or its manager) and Seller shall enter into an employee leasing agreement in a form to be agreed to by Buyer and Seller during the Due Diligence Period (the "**Employee Lease Agreement**") providing for the lease of Hotel employees by Buyer (or its manager) for the period between Initial Closing and the Final Closing (or the earlier termination of this Agreement) wherein Buyer shall be responsible to reimburse Seller for employee costs during the term of such Employee Lease Agreement.

5.6 Contracts. Effective as of the Final Closing Date, Seller shall terminate, at Seller's sole cost and expense, all Contracts (including any equipment leases), unless Buyer otherwise directs Seller pursuant to written notice delivered prior to the expiration of the Due Diligence Period. In the event Buyer shall notifies Seller of any of the equipment leases Buyer does not desire to assume, Seller shall be solely responsible for same and such equipment lease and the property related thereto shall be excluded from the assets being sold hereunder. If Buyer elects to assume any of the Contracts (including any equipment leases) and such assignment and assumption requires consent of the counterparty to such agreement, Seller and Buyer shall cooperate to obtain any required approvals with respect to same prior to the Initial Closing.

5.7 Seller Access Following Initial Closing. Buyer and Seller acknowledge and agree that the Ground Lease will contemplate that during the term of the Ground Lease, Buyer shall permit Seller, as landlord thereunder, to have reasonable access to the Property and all books, records and other reasonably requested information in the possession or control of Buyer or its agents concerning the operating of Property, all as to be more particularly set forth in the Ground Lease.

ARTICLE VI.
Conditions Precedent to Closing

6.1 Conditions Precedent to Buyer's Obligations. Buyer's obligations to consummate the transactions contemplated by this Agreement at the Initial Closing, and the Final Closing, shall be subject to satisfaction or performance of the following conditions, any of which Buyer may waive in writing:

(a) Performance of Obligations. Seller shall have performed all of its obligations under this Agreement to be performed on or prior to the Initial Closing or Final Closing, as applicable.

(b) Representations and Warranties. The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the date of the Initial Closing and the Final Closing; provided, however, changes to representations and warranties due to actions or omissions of Buyer pursuant to the Ground Lease or otherwise shall be deemed modifications to such representations and warranties and shall not be a default by Seller or grounds for Buyer to terminate this Agreement.

(c) Title. At the Final Closing, the Title Company shall be committed to issuing to Buyer the Title Policy insuring Buyer's fee title to the Real Property in the form contemplated by Section 4.4 and agreed upon by Buyer in accordance therewith in the amount of no less than the Purchase Price upon payment of the premiums therefor and delivery of the documents specified in Article VII below. At the Initial Closing, Buyer and TPG Lender shall each have the option to obtain a leasehold title policy for the benefit of Buyer or a lender title policy insuring TPG Lender's secured interest in the Real Property in the form contemplated by Section 4.4 upon payment of the premiums therefor and the delivery of the documents specified in Article VII below and the delivery and release of the Release Documents as set forth in Section 2.4.

(d) Absence of Material Changes. Since the Effective Date of this Agreement, there shall have been no material adverse changes in the business or operations of Seller relating to the Hotel, financial or otherwise.

(e) Condominium Association Estoppel. As provided in and subject to Section 4.5, the Condo Association Estoppel Certificate shall have been delivered to Buyer on or before the Initial Closing Date.

(f) No Litigation. No investigation, action, suit, or proceeding shall be pending or threatened before any court or governmental body which seeks to restrain, prohibit, challenge or interfere with the consummation of the transactions contemplated by this Agreement.

6.2 Conditions Precedent to Seller's Obligations. Seller's obligations to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction and performance of the following conditions, any of which Seller may waive in writing:

(a) Performance of Obligations. Buyer shall have fully and completely performed its obligations under this Agreement.

(b) Representations and Warranties. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects on the date of the Initial Closing and the Final Closing.

(c) No Litigation. No investigation, action, suit, or proceeding shall be pending or threatened before any court or governmental body which seeks to restrain, prohibit, challenge or interfere with the consummation of the transactions contemplated by this Agreement.

6.3 Satisfaction of Conditions.

(a) Failure of Buyer Condition. In the event of the failure of any condition set forth in Section 6.1, Buyer, at its sole election, may (i) terminate this Agreement, in which event the Earnest Money shall be released to Buyer, (ii) waive the condition and proceed to the Initial Closing or Final Closing, as applicable, or (iii) extend the Initial Closing Date or Final Closing Date, as applicable, for such additional period of time (except as otherwise expressly provided herein, not to exceed ten (10) days in the aggregate) as may be reasonably required to allow such condition to be satisfied. Nothing set forth in this Section 6.3(a) shall affect Buyer's rights or remedies under Section 11.2(b) with respect to any breach of this Agreement by Seller.

(b) Failure of Seller Condition. In the event of the failure of any condition precedent set forth in Section 6.2, Seller, at its sole election, may (i) terminate this Agreement, (ii) waive the condition and proceed to the Closing, or (iii) extend the Closing Date for such additional period of time (except as otherwise expressly provided herein, not to exceed ten (10) days in the aggregate) as may be reasonably required to allow Purchaser to satisfy such condition. Nothing set forth in this Section 6.3(b) shall affect Seller's rights or remedies under Section 11.2(a) with respect to any breach of this Agreement by Buyer.

ARTICLE VII.

Closing

7.1 Initial Closing. The consummation of the transactions contemplated by this Agreement to be completed as of the Initial Closing shall occur on June 1, 2021, as may be extended hereunder. The date upon which the Initial Closing occurs is referred to as the "Initial Closing Date". At or before the Initial Closing, the parties shall take such actions and deliver to the other such instruments, items, and documents as are necessary to carry out the purposes of this Agreement due to be completed as of the Initial Closing. The actions to be performed and the instruments, items, and documents to be delivered at the Initial Closing shall include, without limitation, those described in this Section 7.2 and Section 7.3.

7.2 Seller's Acts and Deliveries. At the Initial Closing, Seller shall deliver, or cause to be delivered, the following to Buyer (or the Title Company):

(a) The Ground Lease, executed and acknowledged by Seller;

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(b) A Memorandum of the Ground Lease, in a form reasonably agreed to by the parties (the "Memorandum of Ground Lease"), executed and acknowledged by Seller, to be recorded in the real property records of Grand Traverse County, Michigan;

(c) Evidence of termination of the Management Agreement, effective as of the Initial Closing Date;

(d) Such customary owner's title affidavits and so-called "gap indemnities" as may be required by the Title Company in order to issue the Title Policy (or the lender's policy contemplated in Section 6.1(c)) without exception items which can be deleted by Buyer providing such customary affidavit (the parties acknowledge and agree that the Refinance Documents shall be a Permitted Exception at the Initial Closing, but not the Final Closing);

(e) An Assignment and Assumption of Contracts, Leases, Hotel Intellectual Property Data and Information, Warranties and Guaranties, and Permits that has been duly executed and acknowledged by Seller;

(f) A certificate executed by Seller (the "Seller's Certificate") stating that each of the representations and warranties of Seller set forth in this Agreement are, as of the Initial Closing Date, true, complete and correct in all material respects (without giving effect to any materiality qualifiers already set forth therein), subject to such qualifications as disclosed therein and the limitations contained in this Agreement;

(g) An Assignment and Assumption of Condominium Documents and Declarant's Rights in a form reasonably agreed to by the parties, assigning the rights of the "Declarant" under the Condominium Documents to Buyer on the terms set forth therein;

(h) A settlement statement addressing prorations set forth in Section 8.1;

(i) The Refinance Documents, duly executed and acknowledge by Seller;

(j) The Employee Lease Agreement;

(k) The following documents to be held by the Title Company in escrow until the Final Closing (pursuant to instructions acceptable to Seller, Buyer and Title Company, each in their reasonable discretion):

(i) a warranty deed in the form of **Exhibit F** attached hereto (the “**Deed**”), executed and acknowledged by Seller, but not dated, conveying to Buyer Seller’s right, title and interest in and to the Real Property, subject to the Permitted Exceptions;

(ii) a mutual Termination of Ground Lease in a form reasonably agreed to by the parties (the “**Ground Lease Termination**”), terminating the Ground Lease, effective immediately after the conveyance pursuant to the Deed, executed and acknowledged by Seller, but not dated;

(iii) A Bill of Sale that has been duly executed and acknowledged by Seller, conveying to Buyer the Personal Property, but not dated;

(l) Possession of the Property, subject to rights of guests in possession and tenants pursuant to written leases;

(m) All Review Documents, including but not limited to Contracts, Warranties and Guaranties, and Permits, Bookings and reservation lists and other books and records with respect to the Hotel;

(n) A duly executed affidavit from Seller regarding the non-foreign status of Seller sufficient to relieve Buyer of the withholding requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations relating thereto;

(o) Duly executed affidavits as reasonably required by the Title Company, Buyer’s counsel or Buyer, in form and content reasonably approved by Seller; and

(p) Such other documents and instruments as may reasonably be required by Buyer, its counsel, or the Title Company and that may be necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto, in form and content reasonably approved by Seller.

7.3 Buyer’s Acts and Deliveries. At the Initial Closing, Buyer shall deliver, or cause to be delivered, the following to Seller (or the Title Company):

(a) A counterpart to the Ground Lease and the Memorandum of Ground Lease;

(b) A counterpart of the Bill of Sale that has been duly executed by Buyer;

(c) A counterpart of the Assignment and Assumption of Contracts, Leases, Hotel Intellectual Property Data and Information, Warranties and Guaranties, and Permits that has been duly executed by Buyer;

(d) A certificate executed by Buyer (the “**Buyer’s Certificate**”) stating that each of the representations and warranties of Buyer set forth in this Agreement are, as of the Closing Date, true, complete and correct in all material respects;

(e) The Refinance Documents, as duly executed by the TPG Lender and funds in the amount of the TPG Loan;

(f) The Employee Lease Agreement;

(g) A counterpart to the Ground Lease Termination, executed and acknowledged by Buyer, but not dated, to be held in escrow until the Final Closing; and

(h) Such other documents and instruments as may reasonably be required by Seller, its counsel, or the Title Company and that may be necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto, in form and content reasonably approved by Buyer.

7.4 Final Closing. The consummation of the transactions contemplated by this Agreement to be completed as of the final closing contemplated herein (the “**Final Closing**”) shall occur on January 3, 2022, as the same may be extended as contemplated herein, or on such other date as mutually agreed upon by Seller and Buyer in writing, or on such other date following the Initial Closing as designated in Seller’s sole discretion upon at least thirty (30) days’ prior notice to Buyer. The date upon which the Final Closing occurs is referred to as the “**Final Closing Date**”. At or before the Final Closing, the parties shall take such actions and deliver to the other such instruments, items, and documents as are necessary to carry out the purposes of this Agreement. The actions to be performed and the instruments, items, and documents to be delivered at the Final Closing shall include, without limitation, those described in Section 7.5 and Section 7.6.

7.5 Seller’s Acts and Deliveries – Final Closing.

- (a) Instructions to release the documents being held in escrow pursuant to Section 7.2(j) upon the consummation of the Final Closing;
- (b) An updated Seller’s Certificate;
- (c) An updated title affidavit and/or gap indemnity as contemplated in Section 7.2(d); and
- (d) Such other documents and instruments as may reasonably be required by Buyer, its counsel, or the Title Company and that may be necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto, in form and content reasonably approved by Seller.

7.6 Buyer’s Acts and Deliveries – Final Closing.

- (a) Instructions to release the Ground Lease Termination being held in escrow upon consummation of the Final Closing;
- (b) An updated Buyer’s Certificate;
- (c) Such other documents and instruments as may reasonably be required by Seller, its counsel, or the Title Company and that may be necessary to consummate this transaction and to otherwise effect the agreements of the parties hereto, in form and content reasonably approved by Buyer; and
- (d) The Purchase Price, subject to the prorations, credits and adjustments set forth herein.

7.7 Closing Statements. For each of the Initial Closing and the Final Closing, the Title Company shall prepare and the parties shall sign at the Closing, closing statements with respect to the Property being sold hereunder, which closing statements shall be prepared in conformity with this Agreement and reflect the financial terms of such sale.

ARTICLE VIII.
Prorations; Costs; and Similar Matters

8.1 Prorations. The following prorations and adjustments will be made effective as of 11:59 p.m. (the “**Cut-Off Time**”) on the date before the Initial Closing Date (except as expressly set forth herein or as expressly set forth in the Ground Lease). All prorated items accruing from and after 11:59 p.m. shall be paid by Buyer.

(a) Ad Valorem Taxes. All accrued general real estate, personal property and ad valorem taxes for the current year applicable to the Property shall be prorated as of the Closing Date. Real estate taxes due and payable in the year of Final Closing shall be prorated between Seller and Buyer as of the date of Final Closing based upon the most current information with respect to tax rates and valuation, subject, however, to any payments made by Buyer pursuant to the Ground Lease prior to the Final Closing. All applicable tax rates and valuation of the Property on the Final Closing Date shall be binding upon the parties and shall be deemed final (except as such valuation may alter based on the outcome of any applicable tax appeal, but only to extent such valuation is decreased).

(b) Special Assessments. All assessments, general or special, levied, pending and/or deferred shall be prorated as of the Final Closing Date, with Seller being responsible for any installments of assessments that are due prior to such date and Buyer being responsible for any installments of assessments that are due on or after such date, subject, however, to any payments made by Buyer pursuant to the Ground Lease prior to the Final Closing.

(c) Condominium Assessments. All condominium assessments shall be prorated as of the Initial Closing Date and any condominium funds held by Seller on behalf of the condominium association shall be transferred to Buyer.

(d) Deposits for Bookings and Advance Payments. All Deposits for Bookings and other forms of advance payments shall be prorated as of the date of Initial Closing.

8.2 Closing Costs. Seller and Buyer shall pay the costs of the transactions contemplated by this Agreement as allocated below. Anything in this Agreement to the contrary notwithstanding, the obligation of the parties to pay the allocated costs shall survive the Final Closing or the termination of this Agreement.

(a) Seller's Costs. Seller shall pay: (i) the cost of obtaining the Title Commitment, including all abstracting and title examination costs of the Title Company; (ii) one-half (1/2) of the premium for the owner's Title Policy (not including additional fees or premiums for any endorsements requested by Buyer or costs related to the policy due to a coverage amount in excess of Buyer's allocation of the Purchase Price to real property); (iii) the cost of the UCC Searches; (iv) one-half (1/2) of any charges by the Escrow Agent and Title Company for holding the Earnest Money and closing the transactions contemplated by this Agreement; (v) all state or local documentary stamp tax or transfer taxes applicable to the Real Property; and (vi) Seller's accounting, legal and other expenses associated with the transactions contemplated by this Agreement, whether or not such transactions are consummated.

(b) Buyer's Costs. Buyer shall pay: (i) recording fees; (ii) one-half (1/2) of any charges by the Escrow Agent and Title Company for holding the Earnest Money and closing the transactions contemplated by this Agreement; (iii) Buyer's accounting, legal and other expenses associated with the transactions contemplated by this Agreement, whether or not such transactions are consummated; (iv) all survey costs (if any); (v) one-half (1/2) of the premium for the owner's Title Policy; (vi) any endorsements to the owner's Title Policy, the lender's policy (if applicable) and any endorsements thereto, or as otherwise contemplated in Section 8.2(a) above; and (vii) any and all costs in connection with Buyer's Due Diligence Examination.

8.3 Utilities and Insurance. All suppliers of utilities shall be instructed to read meters or otherwise determine the charges owing for services prior to the Cut-Off Time, which charges shall be paid by Seller. Charges accruing on and after the Initial Closing Date shall be paid by Buyer. If the amount of the charges owing as of the Cut-Off Time cannot be reasonably determined, the apportionment shall be based at Initial Closing upon the amount of such charges for the immediately preceding billing period but shall be readjusted when the amount of such charges is finally determined. If elected by Buyer, Seller shall be given credit, and Buyer shall be charged, for any utility deposits transferred to Buyer at Initial Closing. A schedule of all utility deposits is to be delivered by Seller to Buyer prior to Initial Closing. Seller agrees to execute, in advance of Initial Closing, any releases or other instruments as required by the utility companies to release information to Buyer with respect to the utilities servicing the Property. All existing accounts maintained by Seller for utility services to the Real Property shall be closed as of the day of Initial Closing and all charges accrued prior to Initial Closing shall be paid by Seller. All deposits for such accounts shall be refunded to and shall belong to Seller. Buyer shall arrange for utility services to the Property commencing on the day of the Initial Closing. Buyer shall be responsible for obtaining insurance coverage covering the Property as of the day of the Closing in accordance with the Ground Lease, and risk of loss with respect to the Property shall pass to Buyer at Closing, in accordance with the Ground Lease.

8.4 Sales and Transfer Taxes. Buyer and Seller agree to reasonably cooperate in the preparation and filing of all necessary documentation and tax returns with respect to all sales taxes and transfer taxes due on this transaction in compliance with applicable laws.

8.5 Hotel Operation Income and Expenses. All items of income and expense with respect to the Hotel Property, including, without limitation, revenues from operations, all Property expenses and sewer and utility costs shall be prorated between Buyer and Seller as of Cut-Off Time. The prorations shall be made in such a manner that Seller shall receive the income and shall be responsible for the foregoing costs and expenses to the extent they relate to the use, occupancy or operation of the Property prior to and through the Initial Closing Date, and that Buyer shall receive the income and shall be responsible for the foregoing costs and expenses to the extent they relate to such use, occupancy or operation of the Hotel Property from and after the Initial Closing Date with respect to cash on hand and revenues from operations, the following provisions shall be applied:

(a) All food and beverage revenue as of the Cut-Off Time shall be retained by Seller;

(b) The guest ledger for guests staying at the Hotel Property on the night before the Initial Closing Date, for that night only, shall be split 50/50 between the Seller and the Buyer, less credit card charges, travel company charges and similar commissions;

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(c) Buyer shall purchase, for cash, at the Initial Closing the guest ledger allocated to Seller for Hotel guests staying through the day of the Initial Closing, less credit card charges, travel company charges and similar commissions;

(d) Buyer shall purchase all cash in petty cash accounts and cash registers at the Property on the Initial Closing Date, but all checks, notes, security and other evidence of indebtedness located at the Property on the Initial Closing Date and balances on deposit to the credit of the Seller with banking institutions are and will remain the Property of the Seller and are not included in this sale;

(e) All prepaid rentals, room rental deposits and all other deposits for advance registration, banquets or future services to be provided on and after the Initial Closing Date, together with the value of any outstanding gift certificates, vouchers, or coupons, shall be credited to Buyer;

(f) Buyer shall forward to Seller, promptly upon receipt, any and all revenues due to Seller hereunder and collected by Buyer following Initial Closing.

(g) The compensation of the Hotel employees (including, without limitation, all wages, salaries, unused or unpaid earned or accrued employee benefits, including vacation pay, sick leave and bonuses) (collectively, “**Employee Compensation**”) working as of the Cut-Off Time will be prorated as of the end of their respective shifts and following the Initial Closing until the Final Closing shall be subject to the Employee Lease Agreement. At the Final Closing, subject to any reimbursements owed Seller pursuant to the Employee Lease Agreement, Seller shall pay to all Hotel employees all Employee Compensation earned or accrued prior to the Final Closing.

(h) At the Initial Closing, the Parties shall prepare and agree to a schedule of the prorations to be made at the Initial Closing. To the extent the exact amount of any item of cost, expense or income to be prorated pursuant to this Section is not known as of the Initial Closing Date, the Parties shall, in preparing the schedule of prorations, either reasonably estimate such cost, expense or income, or not include the same in the Schedule (in which latter event the item shall be treated as having been estimated to be zero). Thereafter, as either Party receives receipts, bills or other notices of the actual amount of income, costs or expenses that were originally prorated on the basis of estimates or that were not previously prorated or paid, such Party shall so notify the other Party and the prorations called for by this Section shall be recalculated. Within fifteen (15) days after each such recalculation, the Parties shall make the appropriate cash adjustment between them. Each Party shall have reasonable access to the books and records of the other Party to verify all prorations made pursuant to this Section. Utility accounts for utilities serving the Property shall be changed to Buyer’s name on the Initial Closing Date. It is the intent of the Parties to make a final reconciliation of prorated amounts within ninety (90) days after the Initial Closing.

(i) _____ Seller shall retain all accounts receivable from the operations of the hotel accruing prior to the Initial Closing (“**Seller Accounts Receivable**”). At the Initial Closing, Seller shall provide Buyer with an aging summary of all outstanding Seller Accounts Receivable from the operations of the Hotel. Any payments received by Buyer of the Seller Accounts Receivable shall be paid to Seller. Buyer shall provide Seller with such information from the books and records of the Hotel as Seller may reasonably request in order to assist Seller in collecting the Seller Accounts Receivable. Buyer agrees to remit to Seller without offset and not less frequently than monthly, any funds received that are attributable to the Seller Accounts Receivable received by Buyer. Buyer shall use its commercially reasonable efforts to collect Seller Accounts Receivable post-Closing and promptly remit same to Seller as they are received by Buyer less any reasonable collection costs. Alternatively, at Buyer’s option, Buyer may purchase Seller’s accounts receivable aged sixty (60) days or less at the Initial Closing for ninety percent (90%) of par. Buyer shall not offset any such monies received by Buyer against any claims Buyer may have against Seller.

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(j) _____ All accounts payable owing as of the Cut-Off Time for merchandise, foodstuffs, supplies and other materials and services delivered or rendered to Seller or the Property prior to the Cut-Off Time in the ordinary course of business and in accordance with this Agreement shall be paid for by Seller, together with the cost of repair or service of all Personal Property delivered to a shop for repair or service prior to the Initial Closing Date whether returned to the Hotel before or after the Initial Closing.

(k) _____ At the Initial Closing, Buyer shall purchase, at the same invoice price paid by Seller, all unopened food and beverage inventory and all retail inventory owned by Seller in respect of the Property, and all such property will be transferred to Buyer at the Initial Closing. As used herein, “unopened” shall refer to the actual packages of items, not the case or box containing such unopened packages. The Purchase Price shall be adjusted at the Initial Closing so that the Purchase Price is increased by the purchase price of such retail inventory and unopened food and beverage inventory sold to Buyer.

(l) _____ Such other items which have not been addressed above and which are customarily prorated and adjusted in the sale of a hotel shall be prorated on the Initial Closing Date in accordance with standard, customary prorations, unless to be addressed in the Ground Lease or at the Final Closing.

(m) _____ Seller and Buyer shall reasonably cooperate in good faith after the Initial Closing to make a final determination of the prorations required hereunder (i) with respect to accounts receivable, promptly after receipt of all amounts owing under such accounts receivable, and (ii) with respect to all other prorations required hereunder, no later than thirty (30) days after the Closing Date. Upon the final reconciliation of the prorations under this Agreement, the party which owes the other party any sums hereunder shall pay such party such sums within ten (10) days after the reconciliation of such sums. The obligations to calculate such prorations, make such reconciliations and pay any such sums shall survive the Closing.

(n) _____ All baggage or other property of patrons of the Property checked or left in care of Seller shall be listed in an inventory to be prepared jointly by the employees, agents or representatives of the parties and in duplicate and signed by Seller’s and Buyer’s representatives on the Initial Closing Date. Buyer shall be responsible from and after the Initial Closing Date and will indemnify and hold Seller harmless from and against all claims for all baggage and property listed in such inventory.

(o) _____ To the extent Seller has obtained a loan in connection with the Paycheck Protection Program loan (the “**PPP Loan**”) under the U.S. Small Business Administration (“**SBA**”), Coronavirus Aid, Relief, and Economic Security Act, and such PPP Loan has not been fully paid or forgiven on or before the Final Closing, Seller shall comply with the SBA requirements with respect to payment and/or forgiveness with respect to such PPP Loan, or otherwise comply with the SBA procedural notice dated October 2, 2020 (and any subsequent applicable notice, rule or regulation) regarding changes of ownership transactions. In all cases, Seller shall indemnify, defend and hold Buyer harmless from and against any claim, liability, cost or expense (including reasonable attorneys’ fees) relating to such PPP Loan.

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8.6 Tax Reduction Proceedings. Seller may file and/or prosecute an application for the reduction of the assessed valuation of any of the Property or any portion thereof for real estate taxes or a refund of real estate taxes previously paid. The

amount of any tax refunds (net of attorneys' fees and other costs of obtaining such tax refunds) with respect to the Property for the tax year in which the Final Closing Date occurs shall be apportioned between Seller and Buyer. Tax refunds for any year prior to the tax year in which the Final Closing Date occurs shall belong entirely to Seller. If, in lieu of a tax refund for the tax year in which the Final Closing Date occurs or a prior tax year, a tax credit is received for the tax year in which the Final Closing Date occurs or subsequent tax year, then (x) within thirty (30) days after receipt by Seller or Buyer, as the case may be, of evidence of the actual amount of such tax credit (net of attorneys' fees and other costs of obtaining such tax credit), the tax credit apportionment shall be readjusted between Seller and Buyer and (y) upon realization by Buyer of a tax savings on account of such credit, Buyer shall pay to Seller an amount equal to the savings realized (as apportioned). All refunds, credits or other benefits applicable to any fiscal period prior to the fiscal year in which the Final Closing Date occurs shall belong solely to Seller (and Buyer shall have no interest therein). The provisions of this Section 8.6 shall survive the Final Closing. To the extent of any conflict, this section 8.6 shall control over Section 8.1(a).

ARTICLE IX.
Representations and Warranties

9.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

(a) Title. The Property is, and will from the date hereof to the Final Closing Date be, owned, legally and beneficially and of record by Seller. Seller has an insurable fee simple estate in the Real Property, which as of the Initial Closing and the Final Closing shall be subject only to the Permitted Exceptions.

(b) Leases. With the exception of the Bookings, there are no leases or other agreements under which any person or entity other than Buyer will have the right to occupy any portion of the Property after the Initial Closing, except Hotel guests and other users or occupants of the Property.

(c) Organization. Seller (i) is duly formed, validly existing and in full force and effect under the laws of the State of Ohio, and (ii) has full power and authority to execute and deliver this Agreement and carry out its obligations hereunder.

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(d) Consents. To Seller's knowledge, no consent, approval, or authorization from any governmental authority or other third party is required to be obtained by Seller in connection with the execution, delivery, and performance by Seller of this Agreement.

(e) Review Documents. To the best of Seller's knowledge, all Review Documents that have been or will be furnished to Buyer are true, accurate and complete in all material respects.

(f) Financial Statements. The Financial Statements for Seller that have been or will be provided to Buyer fairly represent the results of operation of the Hotel for the period indicated and are true, complete and accurate in all material respects.

(g) Contracts. During the Due Diligence Period, Seller shall have provided to Buyer true and correct copies of all Contracts, and have advised Buyer of the terms of any oral contracts. There are no other written or oral contracts of any kind to which Seller is a party relating to the operation, maintenance, or repair of the Property. Seller is not in default under any of the Contracts, and Seller has received no notice of any default from any other party to the Contracts. No other party is in default under any of the Contracts.

(h) Labor and Materials. All bills and claims for services, labor, and materials for the Property shall be paid or provided for at or prior to the Initial Closing, and at the Initial Closing there shall exist no lien or claim (whether or not lienable) arising from labor performed or material supplied affecting the Property.

(i) Payroll Taxes. All employee payroll taxes (including social security and unemployment taxes) for time periods prior to the Initial Closing Date shall be paid or provided for at or prior to the Initial Closing.

(j) Property Taxes. All general taxes and special assessments on the Property due and payable with respect to calendar years prior to 2021 have been paid in full or will be paid.

(k) Other Taxes. Seller has paid all sales taxes, use taxes and all other taxes relating to the operation of the Hotel Property which are due and payable.

(l) Additional Tax Representation. Seller has not received written notice of an audit of any taxes payable with respect to the Hotel, which audit has not been resolved or completed, and Seller is not currently contesting or prosecuting any appeal or request for abatement or rollback with respect to any taxes, levies or assessments with respect to the Hotel (including any real property taxes and assessments with respect to the Real Property). All tax returns of Seller required to have been filed for the Hotel have been filed.

(m) Litigation. There are no pending (or, to Seller's knowledge, threatened) judicial, municipal or administrative proceedings (including bankruptcy proceedings) affecting the Property or in which Seller is or will be a party by reason of Seller's ownership or operation of the Property or any portion thereof.

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(n) Condemnation. There are no condemnation, eminent domain, or similar proceedings or actions pending, or to Seller's knowledge, threatened, with respect to the Property or any part thereof.

(o) Authority. The execution and delivery of this Agreement by Seller, and the performance of this Agreement by Seller, has been duly authorized by Seller, and this Agreement is binding on Seller and enforceable against Seller in accordance with its terms. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in a breach of, default under, or acceleration of, any agreement to which Seller is a party or by which Seller or the Property are bound; or (ii) violate any restriction, court order, agreement or other legal obligation to which Seller and/or the Property is subject.

(p) Compliance with Environmental Laws. Except as otherwise disclosed in environmental reports provided to Buyer during the Due Diligence Period, to the best of Seller's knowledge, no Hazardous Materials are located on the Property, except for Hazardous Materials in such amounts as are permitted by applicable Environmental Laws and used in the ordinary course of business in operating, maintaining or repairing the Hotel. Seller has not received any written notice from a governmental authority or entity alleging or stating a violation of any Environmental Laws with respect to the Property. To the best of Seller's knowledge, Seller and the Property are currently in compliance with all applicable Environmental Laws, and there has been no storage, treatment, generation, transportation or Release of any Hazardous Materials at, upon or under the Property that represents a current violation of, or an actionable claim under, any applicable Environmental Laws. Any Hazardous Materials that have been heretofore removed from the Real Estate or otherwise remediated have been removed or remediated in accordance with all applicable Environmental Laws and no further action is required by Seller. For the purposes of this Agreement,

(i) "Environmental Laws" means the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 3001 et seq; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq; the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200 et seq., and equivalent state laws and regulations designed to protect human health and the environment, including, without limitation, those relating to manufacture, processing, use, distribution, treatment, storage, disposal, generation or transportation of Hazardous Materials; air, soil, surface or ground water or noise pollution; Releases; and notification requirements relating to the foregoing;

(ii) "Hazardous Materials" means and includes the following, including mixtures or combinations thereof: (a) any substance or material that is now or in the future included within the definitions of or regulated as "hazardous substances," "hazardous materials," "toxic substances," "pollutant," "contaminant," "hazardous waste," "universal waste," "waste" or "solid waste" in any Environmental Law; (b) oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; (c) asbestos and asbestos-containing materials; and (d) polychlorinated biphenyls.

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(iii) “Release” means a reportable spill, discharge, leak, emission, dumping, or other release of any Hazardous Materials into the environment, including without limitation any Release of a reportable quantity or which is deemed subject to CERCLA by the governmental authority responsible for implementing CERCLA.

(q) Compliance with Other Laws. To the best of Seller’s knowledge, Seller and Hotel Manager (with respect to the Hotel) have complied with all federal, state, county, and local laws, ordinances, regulations and orders applicable to Seller or the Property, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand or notice has been filed or commenced against the Seller or the Hotel alleging any failure to so comply.

(r) Compliance with the Condominium Documents and Association Documents. All Condominium Documents and Association Documents are in full force and effect and, to Seller’s knowledge, comply, in all material respects, with all applicable Michigan State statutes (including, without limitation, condominium statutes) and the requirements of any governmental authority having jurisdiction. Seller has delivered (or will deliver) to Buyer true, correct and complete copies of the Condominium Documents and Association Documents, and the Condominium Documents and Association Documents have not been supplemented, modified or amended, and there are no other material agreements with respect to the condominium regime or the Association. To Seller’s knowledge, no party to the Condominium Documents or Association Documents is in default under the Condominium Documents, and no event has occurred or circumstance exists which, with notice or the passage of time, would result in a breach or default by Seller or any other party thereunder.

(s) Permits and Notices. Seller has all Permits necessary for the use and occupation of the Real Property. Seller has not received any written notice or written report from any governmental authority alleging that the Property or any portion thereof, and the use and operation thereof, is not in compliance with all applicable municipal and other governmental laws, ordinances, regulations, codes, permits, and authorizations.

(t) Pending Insurance Claims. There are no pending insurance claims by Seller with respect to loss or damage to any of the Property.

(u) Prohibited Persons and Transactions. Neither Seller nor to Seller’s knowledge any of its Affiliates or any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives, or agents is a person or entity with whom U.S. persons or entities are restricted from doing business under the regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List), or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

(v) Employees. There are no employment agreements or employment contracts (written or otherwise) to which Seller or Hotel Manager is a party that will be binding on Buyer as of the Initial Closing. There is no collective bargaining agreement or union contract pertaining to the Hotel or Hotel employees, and no union is serving as a collective bargaining agent for any of Seller’s employees as of the Effective Date, and no effort currently exists to organize any of Seller’s employees into a bargaining unit, and has there been no union representation involving any Hotel employee within the last five (5) years. With respect to the Hotel, there are no (i) ongoing or, to Seller’s knowledge, threatened labor strikes, work stoppages, or lockouts in effect by any Hotel employees, (ii) grievances, complaints, or charges by any current or former Hotel employees with respect to employment or labor matters involving the Hotel (including, without limitation, charges of employment discrimination, retaliation or unfair labor practices) pending or, to Seller’s knowledge, threatened in writing in any judicial, regulatory or administrative forum, or under any private dispute resolution procedure, or (iii) internal written grievances, written complaints or written charges by current or former Hotel employees involving the Hotel with respect to employment or labor matters (including, without limitation, allegations of employment discrimination, retaliation or unfair labor practices). To Seller’s knowledge, there are no pending governmental audits or investigations of employment practices or policies at the Hotel, and neither Seller nor Hotel Manager nor the Hotel is subject to any order, consent decree, judgment or injunction in respect of any matter relating to the Hotel. To Seller’s knowledge, all individuals classified as independent contractors who currently work or in the past have worked at the Hotel are or were properly classified as independent contractors under applicable legal requirements.

(w) ERISA. No lien exists on the Property by operation of law or otherwise as a result of the operation or maintenance by Seller, or an Affiliate of Seller, of any employee benefit plan, as that term is defined in ERISA. Seller is not an employee benefit plan and none of Seller's assets are plan assets as defined or determined under ERISA.

(x) Right of First Refusal/Option. Other than Buyer pursuant to this Agreement, no other party has any right (including any right of first refusal or first offer) or option to purchase or otherwise acquire the Hotel or any portion thereof or any interest therein.

(y) Management Agreement. The Management Agreement is in full force and effect. There is no other management or operating agreement with respect to the Property or the Hotel and there are no amendments, modifications, terminations, side letters, guaranties or other agreements affecting the duties and obligations of the parties to the Management Agreement that will survive the Initial Closing. Seller, at Seller's sole cost and expense, must terminate the Management Agreement effective as of the Initial Closing. Buyer shall not be obligated to accept or assume any right, title, interest, duty or obligation in, to or under the Management Agreement, and neither Seller nor Manager shall have any claim or cause of action against Buyer for any loss, cost, damage or liability under the Management Agreement.

(z) Bankruptcy. Seller is not the subject debtor under any federal, state or local bankruptcy or insolvency proceeding, or any other proceeding for dissolution, liquidation or winding up of its assets.

(aa) Intellectual Property. **Exhibit G** contains a true, accurate and complete list of all registered and/or applied for trademarks, trade names, and service marks related to the Hotel. There has been no litigation, claims or proceedings made or brought in connection with any of the Hotel Intellectual Property Data and Information. To Seller's knowledge, there is no party that has any legal rights or interest in any trademark, service mark, logo, recipe, name of hotel restaurants or other food and beverage outlet or other identifying material or symbol used in connection with the Hotel and no party is infringing, misappropriating or otherwise misusing any of the foregoing.

(bb) Data Security. To Seller's knowledge, Seller has not received written notice of any violation of Data Rules pertaining to the personal information of Hotel guests in Seller's or Hotel Manager's possession.

(cc) Improvements. There are no ongoing capital improvement projects at the Property that have commenced on or before the date hereof that will not be completed and paid for in full prior to Initial Closing.

For purposes of this Section 9.1, and the documents to be delivered pursuant hereto, references to "to Seller's knowledge" or "Seller's knowledge" or "Seller has no knowledge" or words of similar import shall mean the actual, present, conscious knowledge of Joseph Moffa (the "Seller Knowledge Individual"), with a commercially reasonable duty of investigation and inquiry, including inquiry of the Hotel Manager, provided, however, that the Seller Knowledge Individual shall not have any individual liability in connection herewith.

9.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

(a) Consents. No consent, approval, or authorization from any governmental authority or third party is required to be obtained by Buyer in connection with the execution, delivery, and performance by Buyer of this Agreement.

(b) Authority. The execution and delivery of this Agreement by Buyer, and the performance of this Agreement by Buyer, have been duly authorized by Buyer, and this Agreement is binding on Buyer and enforceable against Buyer in accordance with its terms. Neither the execution of this Agreement nor consummation of the transactions contemplated hereby will (i) result in a breach of, default under or acceleration of any agreement to which Buyer is a party or by which Buyer is bound, or (ii) violate any restriction, court order, agreement or other legal obligation to which Buyer is subject.

(c) Litigation. To Buyer's knowledge, there are no pending (or threatened) judicial, municipal or administrative proceedings (including bankruptcy proceedings) affecting the Property or in which Buyer is or will be a party by reason of Buyer's ownership or operation of the Property or any portion thereof that are not fully covered by insurance maintained by Buyer or a third party.

(d) Prohibited Persons and Transactions. Neither Buyer nor to Buyer's knowledge any of its Affiliates or any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives, or agents is a person or entity with whom U.S. persons or entities are restricted from doing business under the regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List), or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

9.3 Survival of Representations and Warranties. The representations and warranties contained in Sections 9.1 and 9.2 of this Agreement shall survive the Final Closing and the consummation of the transactions contemplated by this Agreement for a period of twelve (12) months (the "**Survival Period**").

9.4 Changes to Representations and Warranties. The Parties acknowledge and agree that there may be certain factual changes to the representations and warranties set forth herein between the Initial Closing Date and the Final Closing Date due to acts or omissions permitted hereunder or pursuant to the Ground Lease, therefore, Seller's and Buyer's representations and warranties set forth in this Article IX shall be deemed modified to reflect any changes in the same as a result of changes of facts resulting from any actions and omissions which are permitted under this Agreement or the Ground Lease, and shall not be a default by Seller or grounds for Buyer to terminate this Agreement.

ARTICLE X. **Casualty or Condemnation**

10.1 Casualty or Condemnation. If, prior to the Final Closing, all or any portion of the Property is damaged by fire or other casualty (collectively, "**Damage**"), or is taken or made subject to condemnation, eminent domain or other governmental acquisition proceedings (collectively, "**Eminent Domain**"), then the following procedures shall apply:

(a) \$250,000 or Less. If the aggregate cost of repair or replacement or the value of the Eminent Domain (collectively, "repair and/or replacement") is \$250,000 or less, in the opinion of Buyer's and Seller's respective engineering consultants, or such Eminent Domain would not (i) cause the Hotel to be in violation of any applicable law, including, without limitation, zoning laws and requirements, (ii) result in any permanent material reduction or restriction in access to the Real Property, or (iii) have a permanent materially adverse effect on the business as conducted prior to such taking (in Buyer's commercially reasonable discretion), Buyer shall close and purchase the Property and receive a credit from Seller in the estimated amount of the repair or replacement at the Initial Closing. Seller shall pay the amount of the insurance deductible to Buyer, and any casualty insurance or condemnation proceeds shall be the sole and exclusive property of Seller.

(b) In Excess of \$250,000. If the aggregate cost of repair and/or replacement is greater than \$250,000, in the opinion of Buyer's and Seller's respective engineering consultants, or such Eminent Domain would (i) cause the Hotel to be in violation of any applicable law, including, without limitation, zoning laws and requirements, (ii) result in any permanent material reduction or restriction in access to the Real Property, or (iii) have a permanent materially adverse effect on the business as conducted prior to such taking (in Buyer's commercially reasonable discretion), then Buyer, at its sole option, may elect either to (i) terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be refunded to Buyer and neither party shall have further liability hereunder, except as otherwise provided in this Agreement; or (ii) proceed to close subject to a reduction of the Purchase Price by an amount equal to the insurance deductible, which shall be applied against the cash otherwise due at the Final Closing, together with an assignment of the proceeds of Seller's casualty insurance for all Damage (or condemnation awards for any Eminent Domain). In such event, Seller shall reasonably cooperate with Buyer in the adjustment and settlement of the insurance claim (or condemnation award). The proceeds and benefits under any rent loss or business interruption policies attributable to the period following the Final Closing shall likewise be transferred and paid over to Buyer.

(c) Elections and Disputes. The parties shall make all elections and determinations within twenty (20) business days following occurrence of the event giving rise to the Damage or Eminent Domain. In the event of a dispute between Seller and Buyer with respect to the cost of repair and/or replacement with respect to the matters set forth in this Article X, an engineer designated by Seller and an engineer designated by Buyer shall select an independent engineer licensed to practice in the State of Michigan who shall solely resolve such dispute. All fees, costs, and expenses of third engineer so selected shall be shared equally by Buyer and Seller.

(d) Ground Lease. In the event of Damage or a Condemnation occurring between the Initial Closing and the Final Closing, the Ground Lease shall govern the treatment of insurance and/or condemnation proceeds.

ARTICLE XI.

Termination and Default Prior to Closing

11.1 Termination. If this Agreement is terminated by Seller or Buyer pursuant to an express right granted herein, the parties shall have no further rights or obligations to each other; provided, however, the provisions of this Section 11.1 and Sections 3.1, 3.4, 8.2 and 12.12 shall survive such termination and continue to bind the parties. Further, if this Agreement is so terminated, Buyer shall maintain the confidentiality of Seller's records and other matters disclosed by Seller or otherwise discovered by Buyer in connection with the transactions contemplated hereby as required by Section 3.2; promptly return or destroy any of Seller's records and other matters delivered to Buyer by Seller in connection with the transactions contemplated by this Agreement (subject to bona fide retention policies); and deliver to Seller copies of all studies, reports and other materials produced by third parties for Buyer in connection with the physical condition of the Property with no representation or warranty regarding the accuracy or completeness of any such third-party reports.

11.2 Default Prior to Closing.

(a) Default by Buyer. If Buyer defaults in performing its obligations under this Agreement in any material respect (except in the case of Buyer's failure to close on the Final Closing Date, in which case there shall be no cure period), and such default continues uncured for five (5) days after Seller gives Buyer written notice of such default, then for so long thereafter as such default continues uncured, Seller, as its sole and exclusive remedy for any such default, shall be entitled to terminate this Agreement by giving Buyer written notice to such effect, and thereafter (i) Escrow Agent shall deliver the Earnest Money to Seller, (ii) to the extent the TPG Loan has been entered into, Buyer shall cause TPG Lender to reduce the balance of the TPG Loan by \$1,000,000.00 (the "**TPG Loan Credit**"), (i) and (ii) collectively as liquidated damages for Buyer's default, and (iii) to the extent entered into, the Ground Lease shall be terminated as of the date of the termination of this Agreement, and neither party shall thereafter have any further rights or liabilities under this Agreement, except any obligation that, pursuant to the terms of this Agreement, specifically survives the termination of this Agreement. The parties acknowledge that the actual amount of damage resulting from a default by Buyer would be difficult or impossible to accurately ascertain, and that the foregoing sum is a reasonable estimate of such damages under the circumstances existing as of the date of this Agreement. The parties further acknowledge that the TPG Loan Credit is being provided in lieu of Buyer depositing an additional \$1,000,000.00 of earnest money at the Initial Closing, therefore the TPG Loan Credit is a material element of the transaction contemplated under this Agreement, and TPG Lender agrees that it will properly credit the \$1,000,000.00 against to balance of the TPG Loan, in the event of Buyer's default under this Agreement (subject to any grace and cure period provided herein) and Seller's termination of this Agreement in accordance with this Section 11.2(a). In the event TPG Lender fails to provide Seller the TPG Loan Credit as contemplated by this Section 11.2(a), then notwithstanding anything herein to the contrary, Seller shall be entitled to pursue any and all remedies against Buyer and/or TPG Lender, which may be available at law and/or in equity, including but not limited to damages in the amount of the Earnest Money and TPG Loan Credit (excluding, however, special, consequential and punitive damages).

11.3 Default by Seller. If Seller defaults in performing its obligations under this Agreement, and such default continues uncured for five (5) days after Buyer gives Seller written notice of such default, then Buyer shall have the right, after delivery of written notice to Seller of such failure to exercise any one of the following as Buyer's sole and exclusive remedy:

(a) proceed to Closing without any reduction in or set-off against the Purchase Price, in which case Buyer shall be deemed to have waived Seller's default in performing its obligations and covenants under this Agreement or Seller's incorrect representations and warranties; or

(b) terminate this Agreement by giving Seller written notice of such election prior to the consummation of the Initial Closing or Final Closing, as applicable, whereupon (i) Escrow Agent shall promptly return the Earnest Money to Buyer, (ii) Seller shall reimburse Buyer, upon receipt by Seller of reasonable written evidence thereof, for its actual, out-of-pocket due diligence expenses related to the Transaction contemplated by this Agreement, not to exceed One Hundred Fifty Thousand and No/ 100 Dollars (\$150,000) in the aggregate, (iii) neither party to this Agreement shall thereafter have any further rights or liabilities under this Agreement, except, however, that the parties shall remain obligated with respect to the provisions herein which specifically survive termination; or

(a) seek specific performance on the part of Seller under the terms of this Agreement; provided such action seeking specific performance is initiated in a court of competent jurisdiction within sixty (60) days after the scheduled Initial Closing Date or Final Closing Date, as applicable. Failure to file a suit for specific performance within such sixty (60) day period shall be deemed a waiver of such remedy.

11.4 Remedies After Closing. If it is determined at any time after the Initial Closing and prior to the expiration of the Survival Period that any of the representations and warranties of Seller set forth in this Agreement were not accurate in any material respect as of the Effective Date (or as reaffirmed) or Seller breaches any covenant that survives the Initial Closing, then, provided that Buyer has delivered written notice to Seller of such inaccuracy or breach prior to the expiration of the Survival Period, unless Seller cures such inaccuracy or breach to Buyer's reasonable satisfaction (by paying money and, as applicable, performing any act or acts necessary to do so) on or before fifteen (15) days after such written notice from Buyer of such inaccuracy, Seller shall be liable to Buyer with respect to such inaccuracy in such representations and warranties or breach and Buyer shall be entitled to any right or remedy which Buyer may otherwise have against Seller either at law, or in equity or otherwise on account of such inaccuracy or breach. The provisions of this section shall survive the Final Closing (and not be merged therein) or any earlier termination of this Agreement. Seller agrees that, during the Survival Period, Seller shall maintain cash liquidity of not less than \$250,000.00.

11.5 Survival. This Article XI shall survive the Initial Closing, the Final Closing or the earlier termination of this Agreement.

ARTICLE XII.

Miscellaneous

12.1 Brokerage Commission. Seller shall pay the brokerage commission to Alpine Realty Capital Exclusive Realty which shall be paid and discharged at the Final Closing pursuant to a separate written agreement. Except as provided in this Section 12.1, Buyer and Seller each represent and warrant that they have not been represented by any broker in connection with the sale of the Property, and no commissions or fees are due to any broker or finder's fees by reason of either party's actions in this matter. Seller and Buyer shall and do each hereby indemnify, defend and hold harmless the other from and against the claims, demands, actions and judgments of any and all brokers, agents and other persons or entities alleging a commission, fee or other payment to be owing by reason of their respective dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property. Notwithstanding anything in this Agreement to the contrary, the indemnity obligations in this Section shall survive the termination of this Agreement or the Final Closing.

12.2 Construction of Agreement. In the construction and interpretation of the terms of this Agreement, the rule of construction that a document is to be construed most strictly against the party who prepared it shall not be applied because both Buyer and Seller have participated in the preparation of this Agreement.

12.3 Integration; Modification; Waiver. This Agreement constitutes the complete and final expression of the agreement of the parties relating to the subject matter hereof and supersedes all previous contracts, agreements, and understandings of the parties, either oral or written, relating to such subject matter. This Agreement cannot be modified, or any of the terms hereof waived, except by an instrument in writing (referring specifically to this Agreement) executed by a specifically authorized officer, director or agent of the party against whom enforcement of the modification or waiver is sought.

12.4 Headings; Construction. The headings that have been used throughout this Agreement have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Agreement. The words

“herein,” “hereof,” “hereunder,” and other similar compounds of the word “here” when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section unless the context otherwise requires. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.

12.5 Assignment. At or prior to the Initial Closing and/or the Final Closing, Buyer may assign this Agreement to an Affiliate of Buyer without the prior consent of Seller, provided that Buyer gives Seller written notice of such assignment and furnishes a copy of the document evidencing such assignment, and further provided that Buyer shall not be relieved of any liability hereunder. Any other assignment by Buyer of its rights under this Agreement shall be subject to approval by Seller, which approval shall not be unreasonably withheld or delayed; provided in any such case, Buyer shall not be relieved of any liability hereunder. Seller shall not assign any of its rights or obligations under this Agreement without Buyer’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

12.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12.7 1031 Exchange. Buyer and Seller agree to reasonably cooperate if either party elects to structure the transaction as a “like-kind” or other tax-deferred exchange under Section 1031 of the Internal Revenue Code of 1986. If either party elects to effect a tax-deferred exchange, such an exchange shall not interfere with or excuse the party’s obligations under this Agreement, and Seller shall be required to sell the Property directly to Buyer and Buyer shall be required to purchase the Property directly from Seller for the price and on the terms set forth in this Agreement. In no event shall the non-exchanging party be required to pay funds or incur expenses (including attorney’s fees) in addition to those called for elsewhere in this Agreement. Further, in no event shall an election to affect a tax-deferred exchange delay the Final Closing.

12.8 Further Acts. In addition to the acts recited in this Agreement to be performed by the parties, the parties shall perform or cause to be performed at the Initial Closing or Final Closing, as applicable, or after the Initial Closing or Final Closing, as applicable, any and all such further acts as may be reasonably necessary to consummate the transactions contemplated by this Agreement.

12.9 Time of the Essence. Time is of the essence of this Agreement.

12.10 Notices. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by hand, by nationally recognized overnight express delivery service, by U.S. registered or certified mail, return receipt requested, postage prepaid, or by electronic transfer to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

If to Seller: PRIDE ONE CHERRY TREE, LLC &
IPN-PRIDE INVESTMENT HOLDINGS, LLC
Attn: Douglas C. Leohr, Manager
2211 Medina Road, Suite 100
Medina, Ohio 44256
Email: dleohr@prideone.cc

with a copy to: The Law Offices of Phillip A. Helon
Attn: Phillip A. Helon, Esq.
2211 Medina Road, Suite 100
Medina, Ohio 44256
Email: pah@helonlaw.com

If to Buyer: The Procaccianti Group, LLC
1140 Reservoir Avenue
Cranston, Rhode Island 02920-6320
Attention: Ron M. Hadar, General Counsel
E-mail: rhadar@procaccianti.com

With a copy to: Morris, Manning & Martin, LLP
3343 Peachtree Road, N.E.
Suite 1600
Atlanta, Georgia 30326
Attention: Catherine E. Morgen
E-mail: cmorgen@mmlaw.com

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given (a) on the date of delivery, if delivered by hand; (b) on the date received if sent by overnight express delivery or if sent by U.S. mail; or (c) on the date of transmission, if sent by electronic transfer device. Such notices shall be deemed received (i) on the date of delivery, if delivered by hand or overnight express delivery service; (ii) on the date indicated on the return receipt if mailed; or (iii) on the date of transmission, if sent by electronic transfer device. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing.

12.11 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan.

12.12 Litigation. In the event of litigation between the parties with respect to the Property, this Agreement, the performance of their respective obligations hereunder or the effect of a termination under this Agreement, Grand Traverse County, Michigan, shall be the sole and exclusive venue of such litigation. The non-prevailing party shall pay all court-awarded costs and reasonable attorneys' fees incurred by the prevailing party in connection with such litigation. Notwithstanding any provision of this Agreement to the contrary, the obligations of the parties under this Section 12.12 shall survive the termination of this Agreement.

12.13 No Partnership or Joint Venture. The parties shall not by virtue of this Agreement be deemed to be partners or joint venturers.

12.14 No Third Party Beneficiary. This Agreement is for the benefit only of the parties hereto and their nominees, successors, beneficiaries and assignees as permitted in Section 12.5 and no other person or entity shall be entitled to rely hereon, receive any benefit here from or enforce against any party hereto any provision hereof.

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12.15 No Recordation. Neither Buyer, any affiliate of Buyer, nor any person acting by or on behalf of Buyer, shall record this Agreement, or any memorandum or other notice of this Agreement, in any public records. The foregoing shall not prohibit the recording of the Memorandum of Ground Lease as contemplated in this Agreement.

12.16 Counterparts. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. The signatures of all the parties need not appear on the same counterpart, and delivery of a signed counterpart signature page by fax or PDF or other electronic transmission (including, but not limited to, DocuSign or similar electronic signature platforms or technologies) is as effective as signing and delivering an original.

12.17 Severability. If any provision of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the provision or provisions hereof directly involved in the controversy in which such judgment shall have been rendered.

[Balance of Page Intentionally Blank; Signatures on Following Page]

EXECUTED AND DELIVERED as of the date first stated above.

SELLER:

PRIDE ONE CHERRY TREE, LLC, an Ohio limited liability company

By: IPN-PRIDE INVESTMENT HOLDINGS, LLC,
an Ohio limited liability company

Its: Manager

By: /s/ Douglas C. Leohr

Name: Douglas C. Leohr

Title: Manager

Date: April 28, 2021

IPN-PRIDE INVESTMENT HOLDINGS, LLC,
an Ohio limited liability company

By: /s/ Douglas C. Leohr

Name: Douglas C. Leohr

Title: Manager

Date: April 28, 2021

BUYER:

THE PROCACCANTI GROUP, LLC, a Rhode Island limited liability company

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Manager

Date: April 28, 2021

TPG Lender:

The Procaccianti Group, LLC

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Manager

Date: April 28, 2021

EXHIBIT A

LEGAL DESCRIPTION

(HOTEL PROPERTY)

[subject to confirmation upon review of title commitment with respect to excluded units]

Units 1-77 inclusive, Cherry Tree Condominium, pursuant to Grand Traverse County Subdivision Plan 317, but excluding fractional interests in Units 2, 3, 4, 9, 23, 24, 37, 45 and 72 which are not owned by Seller (consisting of Units 2A, 2C, 3A, 3D, 4D, 9D, 23D, 24D, 37A, 45A, 72B, and 72F)

EXHIBIT B

FORM OF GROUND LEASE

[TO BE AGREED UPON IN ACCORDANCE DURING THE DUE DILIGENCE PERIOD]

EXHIBIT C

ALLOCATION

[TO BE ATTACHED IF AGREED UPON IN ACCORDANCE WITH SECTION 2.2(c)]

EXHIBIT D

FORM OF REFINANCE DOCUMENTS

[TO BE AGREED TO DURING DUE DILIGENCE IN ACCORDANCE WITH SECTION 2.4]

EXHIBIT E

DUE DILIGENCE DOCUMENTS

Due Diligence Checklist – Cherry Tree Inn	Items Requested
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1. Financial / Accounting	
1.01	Detailed monthly financial statements (Prior 5 Years and YTD)
1.02	Detailed monthly 2021 budget
1.03	Detailed monthly 2021 actual-reforecast
1.04	Detail of any non-recurring events in last 5 year financial statements (Revenue and Expense)
1.05	YE audited financials if available or internally audited P&Ls
1.06	STR Reports (2018, 2019, 2020 and YTD)
1.07	Reserve account balance
1.08	Balance sheet for asset (2018, 2019, 2020 and YTD)
1.09	AR / AP statements (2018, 2019, 2020 and YTD)
1.10	General Ledger (2018, 2019, 2020 and YTD)
1.11	Historic Retail Rent Rolls
2. Sales & Marketing / Operations / Management	
2.01	2021 Marketing & Business Plan
2.02	List of top producing accounts (rate & # of nights) for current year and change from previous
2.03	Segmentation reports (2018, 2019, 2020 and YTD)
2.04	Booking pace reports
2.05	2021 Citywide calendar
2.06	Internet production reports (Expedia, Booking.com etc.)
2.07	Reservation contribution reports (2018, 2019, 2020 and YTD)
2.08	Schedule of any corporate contracts (crew & services)
2.09	Most recent QA / GSS reports
2.10	Turnaway / lost business reports
2.11	Utility bills (2018, 2019, 2020 and YTD)
2.12	Detailed breakdown of advertising expenditures and any associated contracts (printed, digital, etc.)
2.13	Summary schedule of all fees/costs allocated to or charged by management company
2.14	Summary schedule of all corporate costs that hit asset P&L
2.15	Website performance dashboard and any SEO dashboards

3. CapEx	
3.01	Detailed historical capital expenditures (Past 5 years)
3.02	Five year capital plan (2021-2025)
4. Physical & Environmental	
4.01	Physical (hotel and marina), structural & seismic reports
4.02	Environmental reports
4.03	List of any known physical or environmental issues
4.04	Site plans
4.05	Floor plans
4.06	ADA study, if applicable
4.07	Any other existing third party reports

5. Contracts & Leases	
5.01	Service / vendor / maintenance contracts and summary list of same
5.02	Purchasing agreements
5.03	Management agreement (+ amendments & side letters)
5.04	List and copies of all leases with descriptions (marina, tenant, equipment, off-site)
5.05	Parking agreements
5.06	Consulting agreements
5.07	Rate agreements
6. Taxes	
6.01	Detailed buildup for the tax line items including any applicable taxes booked in that line (i.e. real property taxes, personal property taxes, sales taxes, etc.)
6.02	Real estate tax bills (2017-current)
6.03	Personal property tax bills (2017-current)
6.04	Sales tax bills (2017-current)
6.05	Transient occupancy tax bills (2017-current)
6.06	Any tax abatement documents
7. Insurance	
7.01	Summary of coverages in place; current insurance structure/premiums
7.02	Workers comp costs
7.03	Loss run history: all items since ownership of asset
7.04	COPE information (construction, occupancy, protection, environment; usually available in the property submission the broker submitted to underwriter's for the last property renewal)
7.05	Replacement cost valuation (last reported to underwriters for renewal)
7.06	NFIP flood policy and elevation certificates
7.07	Wind/hurricane PML studies, if applicable
7.08	Any warranties still in effect

8. Employees	
8.01	Current employee roster with title, zip code, gender, DOB, FT/PT, exempt vs. nonexempt, wages
8.02	Current employee handbook
8.03	Benefit info including what specific benefits plans are, who is enrolled, costs for the employee and employer for all lines of coverage, who has what level of coverage, (single, ee+1, family), premium costs for the different lines of coverage, etc.
8.04	Basic organizational chart showing names, base salary, and reporting relationships (and anyone who is clustered or shared that hits the property P&Ls) down to the supervisory level
8.05	Schedule of any complexed positions
8.06	Internal memos & reports regarding organizing efforts
8.07	Competitive wage surveys
8.08	Associate satisfaction surveys
9. Legal	
9.01	Title and all exception documents
9.02	Survey and survey certification
9.03	Zoning verification / most recent zoning report
9.04	Certificate of occupancy
9.05	Liquor license (all documents)

9.06	City violations / ordinances
9.07	All pending / outstanding / threatened litigation
9.08	Copies of all permits & licenses (including renewal dates)
9.09	Correspondence regarding permits & licenses
9.10	Violation notices or issues
9.11	Estoppels (tenants, management, CCRs)
9.12	Existing loan documents
9.13	Prior appraisal
9.14	Covenants, conditions, easements & restrictions (all documents)
10. Other	
10.01	Vehicle information
10.02	Inventory of all I.T. systems (hardware and software) related to Property
10.03	All other inventories - PAR levels
10.04	Correspondence, documentation relating to potential site re-development

EXHIBIT F

FORM OF DEED

[TO BE AGREED TO BY THE PARTIES WITHIN 5 BUSINESS DAYS FOLLOWING EFFECTIVE DATE]

EXHIBIT G

SCHEDULE OF INTELLECTUAL PROPERTY

[SELLER TO PROVIDE WITHIN 5 BUSINESS DAYS FOLLOWING EFFECTIVE DATE]

ASSIGNMENT OF PURCHASE AND SALE AGREEMENT

This **ASSIGNMENT OF PURCHASE AND SALE AGREEMENT** (this “Assignment”) is made as of June 3, 2021, by and among **THE PROCACCIANTI GROUP, LLC**, a Rhode Island limited liability company (“Assignor”), **PHR CHERRY PROPCO, LLC**, a Michigan limited liability company (“Assignee”), and **PHR OP LENDER SUB, LLC**, a Michigan limited liability company (“TPG Lender”).

BACKGROUND

Assignor is a party to that certain Purchase and Sale Agreement (as amended, the “Agreement”) dated April 28, 2021, by and between Assignor and PRIDE ONE CHERRY TREE, LLC, an Ohio limited liability company, and IPN-PRIDE INVESTMENT HOLDINGS, LLC, an Ohio limited liability company (collectively the “Seller”) pursuant to which Seller has agreed to sell, assign, transfer and convey to Assignor certain property including that certain hotel known as the Cherry Tree Inn and Suites located at 2345 N. US 31 North, East Bay Township, Grand Traverse County, Michigan (the “Hotel”). Assignor desires to assign, and Assignee desires to assume, all of Assignor’s rights, title and interest in, to and under the Agreement, subject to the terms and conditions of this Assignment and the Agreement. In addition, Assignor desires to designate TPG Lender as the “TPG Lender” (as such term is defined in the Agreement) under the Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by Assignee to Assignor upon the execution of this Assignment, the receipt and sufficiency of which are hereby acknowledged by Assignor, the parties hereby agree as follows:

1. **Assignment.** Assignor, effective as of the date hereof, hereby assigns, conveys, transfers and sets over to Assignee, all of Assignor’s rights, duties and obligations in, to and under the Agreement, including, without limitation, the Earnest Money (as such term is defined in the Agreement) deposited by Assignor pursuant to the Agreement.
2. **Assumption.** Effective as of the date hereof Assignee shall be deemed to have assumed all of the rights, duties and obligations of Assignor in, to and under the Agreement, arising from and after the date hereof relating to, with respect to or in connection with the Agreement.
3. **TPG Lender.** Effective as of the date hereof, Assignor designates TPG Lender to be the “TPG Lender” (as such term is defined in the Agreement) under the Agreement for all purposes, and TPG Lender accepts such designation.
4. **Governing Law.** This Assignment will be governed by, and construed and interpreted in accordance with the laws of the State of Michigan.
5. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of Assignor, Assignee and their respective successors and assigns.
6. **Counterparts.** This Assignment may be executed by the parties in counterparts, in which event the signature pages thereof shall be combined in order to constitute a single original document.

[signatures on following page]

IN WITNESS WHEREOF, Assignor and Assignee have hereunto set their hands and affixed their seals hereto on the day and year first above written.

ASSIGNOR:

THE PROCACCIANTI GROUP, LLC, a Rhode Island limited liability company

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Authorized Signer

ASSIGNEE:

PHR CHERRY PROPCO, LLC, a Michigan limited liability company

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Authorized Signer

TPG LENDER:

PHR OP LENDER SUB, LLC, a Michigan limited liability company

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Authorized Signer

[Signature Page to Assignment of Purchase and Sale Agreement]

GROUND LEASE

by and between

PRIDE ONE CHERRY TREE, LLC, an Ohio limited liability company, and IPN-PRIDE
INVESTMENT HOLDINGS, LLC, an Ohio limited liability company,
collectively, as Landlord

and

PHR CHERRY PROPCO, LLC, a Michigan limited liability company,
as Tenant

Effective as of June 3rd, 2021

Cherry Tree Inn and Suites
2345 N. US 31 North
East Bay Township, Michigan

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GROUND LEASE

THIS GROUND LEASE (this “**Lease**”) is made and entered into effective as of June 3, 2021 (the “**Effective Date**”), by and between PRIDE ONE CHERRY TREE, LLC, an Ohio limited liability company, and IPN-PRIDE INVESTMENT HOLDINGS, LLC, an Ohio limited liability company (collectively, “**Landlord**”), and PHR CHERRY PROPCO, LLC, a Michigan limited liability company (“**Tenant**”).

All exhibits hereto are incorporated herein by this reference.

ARTICLE 1 LEASE OF PREMISES

Section 1.1 Premises. Landlord, in consideration of the rent to be paid and the covenants and conditions to be performed and observed by Tenant as herein provided, and pursuant to the terms of that certain Purchase and Sale Agreement by and between Landlord, as Seller, and The Procaccanti Group, LLC, as Buyer, dated April 28, 2021 (as amended and assigned, the “**Purchase Agreement**”), does hereby demise and lease to Tenant, and Tenant does hereby lease and accept from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all of Landlord’s right, title and interest in and to certain condominium units more particularly described on **Exhibit A** attached hereto in a condominium project commonly known as Cherry Tree Condominium, a condominium development evidenced by a Master Deed dated July 25, 2006 and recorded August 4, 2006, as document 2006C-00067, Grand Traverse County Records, situated at 2345 N. US 31 North, East Bay Township, Grand Traverse County, Michigan, TO HAVE AND TO HOLD the same, TOGETHER WITH all of Landlord’s right, title and interest in and to all buildings, structures and other improvements (whether one or more, the “**Building**”), all existing furniture, fixtures, equipment and tangible personal property located on or in the Land or Building, and all rights, easements, privileges and appurtenances thereunto belonging or appertaining (all the foregoing hereinafter referred to as the “**Premises**”), unto Tenant for the Term as defined below, unless the Term shall be sooner terminated as provided in this Lease, Tenant YIELDING AND PAYING therefor unto Landlord absolutely net to Landlord, including all taxes, rates, assessments and other charges under this Lease payable by Tenant, in advance during the Term, without any deduction, all Rent as provided in this Lease. Notwithstanding the foregoing, during the Term, title to the Building any alterations or additions thereto, and all furniture, fixtures, equipment and personal property therein, shall remain vested in Landlord, and Landlord shall be entitled to any depreciation deductions and investment tax credits thereon for income tax purposes. Capitalized terms used in this Lease and not otherwise defined herein shall have the meanings given such terms in the Purchase Agreement, unless otherwise indicated.

Section 1.2 Leasehold and Reversionary Estates. The rights granted to Tenant under this Lease are referred to herein as the “**Leasehold Estate.**” The rights of Landlord in the Premises after giving effect to the Leasehold Estate are referred to herein as the “**Reversionary Estate.**”

ARTICLE 2 POSSESSION AND ACCEPTANCE OF PREMISES; TERM

Section 2.1 Term. The term of this Lease shall commence on the Effective Date and shall expire on the earliest of (a) one (1) year following the Effective Date, (b) the Final Closing Date, and (c) the earlier termination of the Purchase Agreement (the “**Expiration Date**”), unless sooner terminated as provided herein, or terminated or extended by mutual written agreement of Landlord and Tenant, and otherwise subject to all terms and conditions of this Lease (the “**Term**”). Tenant shall have no unilateral renewal options; any extension of the Term shall require mutual written agreement of Landlord and Tenant, each in their sole and absolute discretion. For purposes of this Lease, the term “**Lease Year**” shall mean each successive twelve (12) consecutive calendar month period commencing on the Effective Date; provided the last Lease Year shall be the partial period commencing on the day following the expiration of the immediately prior Lease Year and ending on the Expiration Date.

Section 2.2 Quiet Enjoyment. Upon observance and performance of the terms, covenants and conditions contained in this Lease and the Purchase Agreement to be observed and performed by Tenant, Tenant shall peaceably hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person lawfully or equitably claiming by, through or under Landlord, except as otherwise expressly provided in this Lease.

Section 2.3 Purchase Agreement. This Lease is being entered into pursuant to the Purchase Agreement. Landlord acknowledges and agrees that Tenant is an Affiliate of and permitted assignee or designee of The Procaccanti Group, LLC (“**Original Buyer**”), as Buyer under the Purchase Agreement. Unless otherwise expressly provided herein to the contrary, in the event of any conflict between the terms of this Lease and the Purchase Agreement, the Purchase Agreement shall control so long as the Purchase Agreement

is in effect. Original Buyer has assigned all of its right, title and interest in the Purchase Agreement to Tenant pursuant to that certain Assignment and Assumption of Purchase and Sale Agreement dated on or about the date hereof.

ARTICLE 3 RENT

Section 3.1 **Annual Rent.** Commencing as of the Effective Date, Tenant shall pay to Landlord, at the business address of Landlord specified in Article 21 hereof, or at such other address as Landlord shall have designated, from time to time, by notice to Tenant, rent in the amounts from time to time determined in accordance with Schedule 3.1 (the “**Rent**”), payable in monthly installments to Landlord on or before the fifth (5th) day of each month in advance, without demand or set-off, except as otherwise expressly provided in this Lease. The covenant and obligation of Tenant to pay Rent under this Lease is unconditional and independent of all other covenants and conditions imposed on either Landlord or Tenant, whether under this Lease, at law or in equity.

Section 3.2 **Additional Rent.** All payments (whether or not specifically denoted as such) to be made by Tenant pursuant to the provisions of this Lease in addition to Rent shall constitute “**Additional Rent**”.

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Section 3.3 **Late Charge.** Any amount payable hereunder that shall not have been paid within ten (10) days after the date on which the same shall become due and payable shall bear Interest at the rate set forth in Article 36.

Section 3.4 **Rent without Setoff.** Except as otherwise expressly provided herein, there shall be no deduction or setoff of any nature whatsoever from Rent payable under this Lease, by reason of (a) any damage to or destruction of the Premises or any portion thereof from whatever cause or any condemnation; (b) the lawful or unlawful prohibition of, or restriction upon, Tenant’s use of the Premises, or any portion thereof, unless caused by Landlord or unless the same is a breach of warranty or covenant by Landlord; (c) any claim that Tenant may have against Landlord by reason of any default or breach of any warranty by Landlord under this Lease or any other agreement between Landlord and Tenant, or to which Landlord and Tenant are parties; (d) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceedings affecting Landlord or any assignee or transferee of Landlord; or (e) for any other cause whether similar or dissimilar to any of the foregoing. Except as otherwise specifically provided in this Lease, Tenant hereby waives all rights arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law, to entitle Tenant to any abatement, reduction, suspension or deferment of the Rent or other sums payable or other obligations to be performed by Tenant hereunder. The obligations of each party hereunder shall be separate and independent covenants and agreements, and the Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease.

Section 3.5 **Rent Acceptance.** If Landlord, at any time or times, accepts any Rent or any other sum due to it hereunder after the same becomes due and payable, such acceptance shall not excuse delay upon any subsequent occasion, or constitute, or be construed as, a waiver of any of Landlord’s rights hereunder as to payment of any Rent or any other sums due to it thereafter. Furthermore, Landlord’s acceptance at any time of less than the full amount of any item of Rent due shall not be deemed a waiver of any unpaid amount, whether or not there is any dispute thereon between Landlord and Tenant, and whether or not Tenant expressly asserts, and/or Landlord expressly disclaims or denies, such acceptance as being in full settlement, full payment or the like of any such dispute.

ARTICLE 4 RENT TO BE NET TO LANDLORD

It is the intention of the parties that the Rent payable hereunder shall be absolutely net to Landlord without any notice, demand, set-off, counterclaim, deduction, defense, abatement, suspension, deferment, diminution or reduction whatsoever, so that this Lease shall yield to Landlord the net annual Rent specified herein during the Term of this Lease, and that all costs, expenses and obligations relating to the Premises shall be paid by Tenant, except as may be provided otherwise pursuant to the express provisions of this Lease. Without limiting the generality of the foregoing, Tenant shall pay or cause to be paid all real estate taxes, insurance premiums (which shall be paid by Landlord and Tenant shall reimburse Landlord in accordance with this Lease), maintenance changes and charges with respect to the Premises and any and all other expenses and expenditures of every character, ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural in connection with this Lease or the possession, use, occupancy, maintenance, repair or rebuilding of the Premises or any portion of either. Tenant hereby acknowledges and agrees that Landlord shall have no obligation or responsibility whatsoever under this

Lease for the payment of any sums or the making of any replacements, repairs, improvements, maintenance or modifications on or to the Premises or any part thereof, except as may be set forth in the Purchase Agreement.

**ARTICLE 5
USE AND OPERATION OF PREMISES**

Section 5.1 **Hotel Use.** The Premises shall be used for the operation of the hotel (the “**Hotel**”) operated in a manner consistent with its operation prior to the Effective Date (the “**Hotel Standard**”), and for uses ancillary or related thereto (which may include, without limitation, restaurant(s), bar(s), meeting, conference and/or banquet space, a gift and/or sundries shop, fitness and spa facilities, and parking facilities), and for no other purpose. Tenant shall proceed with diligence and exercise reasonable good faith efforts to obtain and maintain all approvals necessary to operate and use the Hotel for its intended purpose under all applicable Laws. Tenant shall not, and shall not knowingly permit anyone else to, bring into, use, store or dispose of on the Premises any materials or substances in violation of any applicable Laws. The parties acknowledge and agree that TPG Hotels & Resorts, Inc. or an Affiliate thereof shall be the “**Hotel Operator**”.

Section 5.2 **Licenses and Permits.** Tenant shall apply for, obtain and maintain (or shall require its Hotel Operator to apply for, obtain and maintain) for the benefit of the Premises all licenses and permits required in connection with the management and operation of the Hotel (collectively, “**Licenses**”). Landlord shall execute and deliver any and all applications and other documents and otherwise reasonably cooperate with Tenant at no cost to Landlord, to the extent necessary in connection with Tenant applying for, obtaining and maintaining such Licenses. In the event this Lease terminates prior to the Final Closing, Tenant shall assign (or cause its Hotel Operator to assign) all such Licenses for the Hotel to Landlord or its designee upon termination of this Lease (to the extent assignable). Notwithstanding anything to the contrary, to the fullest extent permitted by applicable Laws (as hereinafter defined), until such time as Licenses shall be issued to Tenant or Hotel Operator, during the term of this Lease, Landlord shall appoint Hotel Operator as its manager with respect to any Licenses held by Landlord or its affiliates in connection with the operation of the Hotel and Hotel Operator shall exercise and perform all of such licensee’s rights, duties and obligations with respect to such Licenses on such licensee’s behalf. Tenant shall indemnify, defend and hold harmless Landlord from any and all liabilities, obligations, claims damages, penalties, actions, costs, expenses and disbursements (including, without limitation, attorneys’ fees and expenses) of any kind or nature whatsoever that may be imposed upon, incurred by, or asserted against Landlord, or upon, against or in respect of the Premises or Landlord’s interest therein by reason of, relating to or arising out of Tenant’s and/or Hotel Operator’s use of the Licenses and/or ownership and/or operation of the Hotel. The foregoing indemnity shall survive the expiration or earlier termination of this Lease for a period of one (1) year.

Section 5.3 **Compliance with Applicable Laws.** Tenant shall keep the Premises in a condition in all material respects conforming to the requirements of all applicable statutes, laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any governmental authority having jurisdiction over the Premises (all of the foregoing hereinafter referred to collectively as “**Laws**”); provided, however, Tenant shall have no obligation to perform any capital repairs or make any capital expenditures.

Section 5.4 **Notices** .

(a) Tenant shall promptly notify Landlord in writing: (i) upon receipt by Tenant of any written notice, demand or similar communication with respect to the violation of any Law; (ii) upon receipt by Tenant of any summons, notice, demand or similar communication regarding any action at law or in equity or before any regulatory body in connection with or involving the Premises, or any portion thereof; (iii) upon receipt by Tenant of any notice or communication from an insurance carrier regarding a material change to insurance coverages or the insurability of the Premises; and (v) upon receipt by Tenant of any notice or communication of any nature, written or oral, that, in the reasonable opinion of Tenant, is likely to have a material adverse effect on the Premises or the Hotel or the operation thereof.

(b) Landlord shall promptly notify Tenant in writing: (i) upon receipt by Landlord of any written notice, demand or similar communication with respect to the violation of any Law; (ii) upon receipt by Landlord of any summons, notice, demand

or similar communication regarding any action at law or in equity or before any regulatory body in connection with or involving the Premises, or any portion thereof; (iii) upon receipt by Landlord of any notice or communication from an insurance carrier regarding a material change to insurance coverages or the insurability of the Premises; and (v) upon receipt by Landlord of any notice or communication of any nature, written or oral, that, in the reasonable opinion of Landlord, is likely to have a material adverse effect on the Premises or the Hotel or the operation thereof.

ARTICLE 6 TAXES AND UTILITY EXPENSES

Section 6.1 **Payment of Taxes and Utilities.** Tenant shall during the Term of this Lease, as Additional Rent, pay and discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments (including, but not limited to, all sales taxes, use taxes and all other taxes relating to the operation of the Hotel), water rents, rates and charges and sewer rents (hereinafter referred to as “**Taxes**”) and each and every installment thereof which shall or may become due and payable with respect to the period of time on and after the Effective Date and until the expiration of the Term of this Lease, or which may become liens upon or for or with respect to the Premises or any part thereof, or any buildings, appurtenances or equipment owned by Tenant thereon or therein or any part thereof with respect to the period of time on and after the Effective Date and until the expiration of the Term, together with all interest and penalties thereon (all of which shall also be included in the term “**Taxes**” as heretofore defined) and all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, telephone, cable and/or satellite television, internet services, sanitary sewer, storm sewer, and other service or services, furnished to the Premises or the occupants thereof during the Term of this Lease (hereinafter referred to as “**Utility Expenses**”). Tenant shall be deemed to have complied with the covenants of this Section 6.1 if payment of such Taxes shall have been made either within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty or interest, and Tenant shall produce and exhibit to Landlord satisfactory evidence of such payment, if Landlord shall demand the same in writing. For the last partial tax fiscal year of the Term, to the extent that either Landlord or Tenant has paid Taxes which would otherwise be the other party’s obligation hereunder, then Tenant shall reimburse such amount of Tenant’s obligation to Landlord, or Landlord shall reimburse such amount of Landlord’s obligation to Tenant, as the case may be, within thirty (30) days after demand therefor by the party paying such Taxes, accompanied by copies of receipted bills showing the payment of such Taxes, which shall include a computation of Tenant’s share of the Taxes for the tax fiscal year. Tenant’s share of the Taxes for the purposes of this Section 6.1 shall be the total Taxes for which Tenant (as Buyer) is responsible for pursuant to Section 8.1 of the Purchase Agreement.

Section 6.2 **Removal of Liens.** Tenant shall at all times keep the Premises free of any claim, lien, encumbrance or security interest other than liens for real and personal property taxes and assessments not then delinquent (hereinafter collectively called a “**Lien**”). In the event a Lien is asserted against the Premises or any part thereof, Tenant shall promptly give Landlord written notice thereof and shall, within thirty (30) days after such notice is given, take all reasonable steps necessary for removal thereof or bonding over unless Landlord notifies Tenant in writing within such thirty (30)-day period that Landlord wishes to contest such Lien or permit Tenant to contest such Lien in accordance in with Section 6.3 below. Tenant shall promptly notify Landlord of any notice received by it regarding such matters.

Section 6.3 **Right to Contest.** Tenant or its designees shall have the right to contest or review all Taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, with the consent of Landlord (not to be unreasonably withheld) or if necessary to prosecute such appeal, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents reasonably necessary to accomplish the foregoing, subject to Landlord’s prior approval as to form and content, which approval shall not be unreasonably withheld). Notwithstanding the foregoing, Tenant shall promptly pay all Taxes if at any time the Premises or any part thereof shall then be subject to imminent foreclosure litigation, or if Landlord shall be subject to any imminent liability, arising out of the nonpayment thereof. The legal proceedings referred to in this Section 6.3 shall include appropriate proceedings and appeals from orders therein and appeals from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied or assessed against the Premises or adjudicated to be due and payable on any such contested Taxes.

Section 6.4 **Refunds and Rebates.** Landlord covenants and agrees that if there shall be any refunds or rebates on account of the Taxes paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to Tenant, to the extent that such refunds or rebates relate to the period between the Effective Date and the expiration date of the Term of this Lease. Any such refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Landlord

shall, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as received by Landlord in accordance with this Section 6.4. This Section 6.4 shall survive the expiration or earlier termination of this Lease.

ARTICLE 7
MAINTENANCE, IMPROVEMENTS, ALTERATIONS, ETC.

Section 7.1 **Maintenance of Premises.** Tenant shall, at all times during the Term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear and damage by fire or other Casualty and taking by Condemnation (as such terms are hereinafter defined) excepted), the Building and any and all other improvements at any time erected on the Premises, including, without limitation, the structure(s), heating, air conditioning, ventilating, plumbing, mechanical, electrical, telephone, elevator, escalator, life and safety and security systems, and floor and wall coverings thereon and therein, in good order, repair and condition, and shall use all reasonable precaution to prevent waste, damage or injury to the Premises. Landlord shall not be required to furnish any services or facilities or to make any repairs, additions, alterations or replacements in or to the Premises or the Building or other improvements during the Term.

Section 7.2 **Waste, Nuisance or Unlawful Activity.** Tenant will not make or allow any waste or stripping of the Premises, or maintain or permit to be maintained a nuisance or allow or make any unlawful, improper, offensive, noisy or disorderly use of the Premises. For purposes of this Section 7.2, any material non-compliance with Hazardous Materials Laws or the requirements of prudent Hazardous Materials management practices shall constitute “waste.”

Section 7.3 **Inspection and Repair.** Tenant will permit Landlord and Landlord’s employees and agents at all reasonable times during the Term to enter the Premises and examine the state of repair and condition of the Premises. Landlord will give Tenant reasonable prior notice of any inspection, except in the case of an emergency. Tenant shall also permit Landlord to establish and maintain an observational only operations review with respect to the Hotel, at Landlord’s sole cost and expense (“**Observational Management Program**”). Personnel from Landlord’s Observational Management Program shall have reasonable access to the Premises and all books, records and other information in the possession or control of Tenant or Hotel Operator concerning the Premises and Hotel, and shall have the right (at Landlord’s expense) to establish duplicate books and records. Landlord shall not interfere with Tenant or Hotel Operator in connection with the Observational Management Program.

Section 7.4 **Alterations.** Tenant shall not have any right to make any material alterations, changes, additions or improvements to the Premises or the Hotel, without the prior written consent of Landlord, which consent Landlord shall not unreasonably withhold, condition or delay.

Section 7.5 **Surrender.** Except with respect to the Final Closing, on the last day or sooner termination of the Term of this Lease, Tenant shall quit and surrender the Premises, and the Building and other permanent improvements then thereon, ordinary wear and tear and damage by fire or other casualty and taking by eminent domain excepted. Notwithstanding the foregoing, Tenant may remove its personal property upon termination or expiration of this Lease, as long as Tenant repairs any damage to the improvements caused thereby.

Section 7.6 **Intentionally Omitted.**

Section 7.7 **Environmental Matters.**

(a) Tenant represents and covenants that: (i) Tenant has not previously and will not cause, any discharge, spillage, uncontrolled loss, seepage, leakage, discharge or other release of a Hazardous Material in violation of any applicable Hazardous Materials Laws then in effect at, upon, under or within the Premises or any contiguous real property (a “**Spill**”); (ii) Tenant has not and will not hereafter cause or suffer to occur any storage, transportation, handling, or disposal of any Hazardous Material at, upon, under or within the Premises or any contiguous real property in violation of any applicable Hazardous Materials Laws

then in effect; and (iii) Tenant will not permit any subtenant or occupant of the Premises to engage in any activity or operations that could lead to the imposition of liability on Landlord under applicable Hazardous Materials Laws then in effect, or which could result in the creation of a lien upon the Premises under applicable Hazardous Materials Laws then in effect. For purposes of this Section 7.7, “**Hazardous Materials Laws**” shall mean all laws, statutes, regulations, rules, ordinances, decrees, codes, orders, writs, licenses and permits of all governmental authorities relating to environmental matters, which deal with solid waste, hazardous waste, wastewater discharges, water quality, drinking water, air emissions, air quality, hazardous materials, or employee health, safety or community right-to-know, sanitation, protection of natural resources, or which impose liability or standards of conduct concerning any Hazardous Materials, or hazardous material, toxic or dangerous waste, substance or material, pollutant or contaminant, as may now or at any time hereafter be in effect, including by way of illustration and not by way of limitation the following specific laws as may hereafter be amended, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (and any amendments or extensions thereof), the Toxic Substances Control Act, and all other applicable environmental requirements including those later determined or provided by law. “**Hazardous Material(s)**” shall mean asbestos, radioactive material, radon, PCBs, petroleum hydrocarbons (including, but not limited to, crude oil, diesel oil, fuel oil, and gasoline), and any element, compound, mixture, solution, or substance deemed under federal, state, or local law or regulation a hazardous substance, hazardous waste, hazardous material, medical waste, toxic waste, human carcinogen or reproductive toxin, pesticide, fungicide, rodenticide, pollutant or contaminant, or toxic air pollutant, or which possesses identifiable characteristics which would so classify it as being hazardous under any Hazardous Materials Laws.

(b) Tenant shall comply in all material respects with all applicable Hazardous Materials Laws pertaining to the Premises and any activities carried out thereon. Further, Tenant shall notify Landlord promptly in writing in the event of: (i) the occurrence of any Spill or other environmental contamination in, on, under, or upon the Premises of which Tenant is or becomes aware, or (ii) any violation of (including any threat of a violation or enforcement action by any governmental authority), or noncompliance with, any applicable Hazardous Materials Laws affecting the Premises of which Tenant is or becomes aware. Tenant shall promptly forward to Landlord copies of all orders, notices, permits, applications, citations, inspections, audits, writs, enforcement actions, or other communications, correspondence or reports in connection with any such Spill, contamination, violation, or noncompliance.

(c) Tenant shall, to the maximum extent permitted by applicable law, indemnify Landlord, Landlord’s successors, assigns and successors-in-title (collectively, the “**Landlord Indemnified Parties**”) and hold the Landlord Indemnified Parties harmless from and against all loss, liability, damage and expense (including reasonable attorneys’, consultants’ and expert witness fees), suffered or incurred by the Landlord Indemnified Parties, or any of them: (i) as a result of any violation of or noncompliance with any applicable Hazardous Materials Laws in effect at the time of such violation or noncompliance affecting the Premises; (ii) resulting from the assertion of any lien placed on the Premises under any applicable Hazardous Materials Laws in effect at the time of the assertion of such lien; or, (iii) as a result of any Spill or other environmental contamination affecting the Premises, whether or not the same originates or emanates from the Premises or any other contiguous real property (such indemnification to include compensation for any loss of value of the Premises as a result of such Spill or contamination); or, (iv) with respect to any other matter affecting the Premises involving the U.S. Environmental Protection Agency or any similar state, federal or local agency or authority or any successor to any thereof. However, there shall be excluded from the foregoing indemnification and hold harmless agreement any loss, liability, damage or expense (including reasonable attorneys’, consultants’ and expert witness fees), suffered or incurred by the Landlord Indemnified Parties, or any of them: (Y) which is attributed solely to any Spill or other environmental contamination which was in existence prior to the commencement date of this Lease, or (Z) which was or is caused by the Landlord Indemnified Parties, or any of them, or their respective agents, employees, officers or contractors. Landlord shall, to the maximum extent permitted by applicable law, indemnify Tenant, and Tenant’s successors, assigns and successors-in-title or successors-in-interest (collectively, the “**Tenant Indemnified Parties**”) and hold the Tenant Indemnified Parties harmless from and against all loss, liability, damage and expense (including reasonable attorneys’, consultants’ and expert witness fees), suffered or incurred by the Tenant Indemnified Parties, or any of them, under, or on account of, any matter set forth in clauses (Y) and (Z) immediately above. The foregoing indemnification and hold harmless agreements shall expressly survive the expiration or earlier termination of this Lease for a period of one (1) year.

(d) In the event of (i) any Spill or other environmental contamination by a Hazardous Material on, in, or under the Premises or any contiguous real property, whether or not the same originates or emanates from the Premises or any such contiguous real property, or (ii) failure by Tenant to comply with any applicable Hazardous Materials Laws affecting the

Premises, Landlord may, at its election, but without the obligation to do so, give such notices and/or cause such work to be performed on, in, under or upon the Premises and Landlord may take any and all other actions as Landlord shall reasonably deem necessary or advisable to remedy such Spill or the existence of such Hazardous Material, or to cure said failure of compliance. Any amounts paid as a result thereof, together with Interest thereon at the rate set forth in Article 36, shall be immediately due and payable by Tenant to Landlord; provided, however, in the event any such Spill or other environmental contamination by a Hazardous Material affecting the Premises or any such contiguous real property is of the nature described in the proviso in clauses (Y) and (Z) of Section 7.7(c) any and all such work or actions shall be undertaken at the sole cost and expense of Landlord.

ARTICLE 8 COVENANT AGAINST LIENS

If, because of any act or omission of Tenant, its agents, employees, subtenants or contractors, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within sixty (60) days after written notice from Landlord to Tenant of the filing thereof; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom. Tenant or its designees shall have the right to contest any such liens by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord).

ARTICLE 9 INTENTIONALLY OMITTED

ARTICLE 10 ASSIGNMENT, TRANSFER AND SUBLETTING

Section 10.1 Assignment or Subletting Generally. Tenant shall not assign, transfer, mortgage, hypothecate, or encumber, by operation of law or otherwise, this Lease, or any of Tenant's right or interest herein or hereto, nor sublet the Premises, or any portion thereof, nor grant any license or right of use or occupancy with respect to the Premises, without the prior written consent of Landlord, which consent may be withheld by Landlord in its sole and absolute discretion; provided, however, the forgoing shall not restrict the letting of guest rooms and facilities in the ordinary course of the operation of the Premises as a hotel.

Section 10.2 Tenant's Affiliates. Notwithstanding Section 10.1, Tenant may, without the consent of but with written notice to Landlord, assign this Lease to an Affiliate, provided Tenant shall not be released from any liability under this Lease. For purposes of this Lease, "Affiliate" shall have the meaning set forth in the Purchase Agreement.

Section 10.3 Survival. The provisions of this Article 10 shall survive the expiration of the Term or earlier termination of this Lease.

ARTICLE 11 SUBORDINATION

Landlord and Tenant agree that this Lease shall be and the same hereby is made subject and subordinate at all times to all covenants, restrictions, easements and encumbrances affecting the fee title of the Premises, and to any mortgage in any amounts and all advances thereon which are placed against or affect any of the Premises, prior to the execution of this Lease, and to all renewal, modifications, consolidation, participations, replacements and extensions thereof; provided, however, Landlord shall not encumber the Premises without Tenant's prior written consent with any mortgage other than that certain mortgage granted to PHR OP Lender Sub, LLC in connection with the TPG Loan (as defined in the Purchase Agreement). The term "mortgages" as used herein shall be deemed to include mortgage deeds, deeds of trust and other usual forms of security instruments. The aforesaid provisions shall be self-operative and no further instrument of subordination shall be necessary unless required by any such mortgagees. Should Landlord or any mortgagees desire confirmation of such subordination, then Tenant, within ten (10) days following Landlord's written request therefor, agrees to execute and deliver, without charge, any and all documents (in form and substance acceptable to Landlord and such mortgagees) subordinating this Lease and Tenant's rights hereunder pursuant to the terms of this Lease. However, should any such mortgagees request

that this Lease be made superior, rather than subordinate, to any such mortgage, then Tenant, within ten (10) days following Landlord's written request therefor, agrees to execute and deliver, without charge, any and all documents (in form and substance acceptable to Landlord and such mortgagees) effectuating such priority.

Notwithstanding any language to the contrary contained in this Lease, Landlord covenants and agrees, upon Tenant's written request, to use reasonable efforts to obtain from any mortgagee, beneficiary or trustee, lessor or other secured party under any existing mortgage, deed of trust, or other security instrument, or arrangement presently placed upon the Premises, an agreement, in recordable form, which provides that in the event of any foreclosure, sale under power of sale, or transfer in lieu of any of the foregoing, or the exercise of any remedy pursuant to any such agreement, security instrument, or arrangement (a) the Tenant's use, possession and enjoyment of the Premises shall not be disturbed and this Lease shall continue in full force and effect so long as Tenant is not in default beyond the applicable cure periods hereunder, and (b) that such successor to the Landlord's interest will assume the obligations of Landlord under this Lease accruing subsequent to any such foreclosure, sale or transfer.

ARTICLE 12 REPRESENTATIONS

Landlord represents and warrants to Tenant that Landlord has authority to execute, deliver and perform this Lease and each instrument and agreement to be executed and delivered by Landlord pursuant hereto and to take all of the actions contemplated hereby to be taken by Landlord.

Tenant represents and warrants to Landlord that Tenant has authority to execute, deliver and perform this Lease, and each instrument and agreement to be executed and delivered by Tenant pursuant hereto and to take all of the actions contemplated hereby to be taken by Tenant.

The provisions of this Article 12 shall survive the expiration of the Term or earlier termination of this Lease

ARTICLE 13 INDEMNITY BY TENANT

Tenant hereby assumes all risks of personal injury or wrongful death and of loss of or damage to property by whomsoever owned, on or in the Premises or any part thereof, arising from or in connection with the use and occupancy of the Premises by Tenant, any guest, invitee, licensee, or sublessee, or caused by any accident or fire on the Premises or any part thereof, or occasioned by any nuisance made or suffered thereon, or resulting from any failure on the part of Tenant or its officers, employees, or other agents to conform to or observe laws or to maintain the Premises in a good or safe condition. Tenant will indemnify, defend, and hold the Landlord Indemnified Parties harmless from and against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of the Premises by Tenant or any person claiming by, through or under Tenant, or any accident or fire on the Premises, or any nuisance made or suffered thereon, or any failure by Tenant to keep the Premises in a safe condition, or to perform any of the covenants herein contained, arising in any case during the term of this Lease, and will reimburse the Landlord Indemnified Parties for all costs and expenses, including reasonable attorney's fees and costs, incurred by them in connection with the defense of any such claims and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises at the sole risk of Tenant and save the Landlord Indemnified Parties harmless from any loss or damage thereto by any cause whatsoever, except to the extent any such claims, demands, costs, loss, damages and/or expenses result from the gross negligence or willful misconduct Landlord; subject, however, to the provisions of Section 14.7. This Article 13 shall survive the expiration or earlier termination of this Lease for a period of one (1) year.

ARTICLE 14 INSURANCE

Section 14.1 Liability Insurance. Tenant shall provide, at its expense, and keep in force during the Term of this Lease, Commercial General Liability insurance coverage, in an insurance company or companies selected by Tenant and meeting the requirements of this Lease, in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury, death and for property damage arising out of the Premises, with umbrella or excess liability coverage in the amount of at least Ten Million Dollars (\$10,000,000). Tenant shall supply Landlord with certificates of insurance for all the above-described policy(ies) of insurance and shall name Landlord, Tenant, and the Hotel Operator as insured parties, as their respective interests may appear, on or before the Effective Date and thereafter before the expiration of each such insurance policy. Such certificates shall provide that such insurance may not be terminated, canceled or amended except upon thirty (30) days' prior written notice to Landlord and Tenant.

Section 14.2 Property Insurance. During the Term of this Lease, Landlord shall maintain, and, if applicable, renew or replace with comparable coverage, the "All risk" or Special Causes of Loss Form property insurance coverage in effect for the Property as of the Effective Date, subject, however, to applicable Laws and any requirements of any Mortgage; provided, Tenant shall reimburse Landlord for the premiums for such coverages paid by Landlord during the Term of this Lease. Landlord shall supply Tenant with certificates of insurance for all the above-described policy(ies) of insurance and shall name Landlord, Tenant, and Hotel Operator as insured parties, as their respective interests may appear, on or before the Effective Date and thereafter before the expiration of each such insurance policy. Such certificates shall provide that such insurance may not be terminated, canceled or amended except upon thirty (30) days' prior written notice to Landlord and Tenant.

Section 14.3 Business Interruption Coverage. Tenant shall obtain coverage for the actual loss sustained (including rental value) resulting from the necessary interruption of business caused by direct physical damage to or destruction of real or personal property resulting from an occurrence covered by the insurance described in Section 14.2 above, covering at least twelve (12) months period including one hundred eighty (180) days subsequent to completion of any required repairs or replacements necessary to return the Premises to a condition at least as good as the condition prior to the interruption event. Tenant shall supply Landlord with certificates of insurance for all the above-described policy(ies) of insurance and shall name Landlord, Tenant, and the Hotel Operator as insured parties, as their respective interests may appear, on or before the Effective Date and thereafter before the expiration of each such insurance policy. Such certificates shall provide that such insurance may not be terminated, canceled or amended except upon thirty (30) days' prior written notice to Landlord and Tenant.

Section 14.4 Other Required Insurance. Without limiting the generality of the insurance requirements as set forth in the foregoing provisions of this Article 14, which shall be deemed minimum insurance requirements hereunder, Tenant shall obtain and maintain in force throughout the entire Term of this Lease such other insurance coverages, in such amounts, as may be required under any management or operating agreement Tenant may have with a Hotel Operator for the Premises and Hotel.

Section 14.5 Policy Requirements. Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the Premises and other locations of Tenant and Affiliates of Tenant, provided such blanket insurance complies with all of the other requirements of this Lease with respect to the insurance involved. If Tenant should fail to pay any insurance premium required under this Article 14 then Landlord may, but shall not be obligated to, pay such insurance premium and add the amount of such insurance premium to the next installment of the Rent. Payment of such insurance premium by Landlord shall not constitute a waiver by Landlord of the default by Tenant for failing to pay such insurance premiums. All property and casualty insurance and business interruption insurance required hereunder shall have attached thereto the Lender's Loss Payable Endorsement (Form 438 BFU NS), or its equivalent, or a loss payable clause acceptable to PHR OP Lender Sub, LLC ("**Lender**").

Section 14.6 Insurance Carriers. All insurance coverage required to be carried hereunder shall be carried with insurance companies licensed or permitted to do business in the state in which the Premises is located and which have a credit rating of "A-" or better by A.M. Best or A- or better by Standard & Poor's Ratings Services, Inc., a division of The McGraw Hill Companies, Inc. ("**S&P**") or "A2" or better by Moody's Investors Service, Inc. ("**Moody's**").

Section 14.7 Waiver of Subrogation Notwithstanding anything in this Lease to the contrary, neither Landlord nor Tenant shall be liable by way of subrogation or otherwise to the other party or to any insurance company insuring the other party for any loss or damage to any of the property of the Landlord or Tenant covered by insurance even though such loss or damage might have been occasioned by the negligence of the Landlord or Tenant or their respective officers, directors, members, partners, employees, agents, representatives, successors and assigns. This release shall be in effect only so long as the applicable insurance policies shall contain a clause or endorsement to the effect that the waiver shall not affect the right of the insured to recover under such policies. Each party shall

use commercially reasonable efforts, including payment of any additional premium, to have its insurance policies contain the standard waiver of subrogation clause. In the event Landlord's or Tenant's insurance carrier declines to include in such carrier's policies a standard waiver of subrogation clause, Landlord or Tenant shall promptly notify the other party.

**ARTICLE 15
CASUALTY**

Section 15.1 Casualty. In case of any damage to or destruction of the Premises, the Building or any part thereof, Tenant shall promptly give written notice thereof to Landlord generally describing the nature, extent and cause of such damage or destruction. All matters with respect to damage shall be governed by the Purchase Agreement; provided, however, in the event the Purchase Agreement is terminated in accordance Section 10.1 of the Purchase Agreement, with all insurance proceeds payable from Property Insurance maintained in accordance with Section 14.2 shall belong to Landlord (less any proceeds allocable to any lost profits or costs incurred by Tenant for the period prior to the termination of the Purchase Agreement and this Lease).

**ARTICLE 16
CONDEMNATION**

Section 16.1 Allocation of Award. If any Eminent Domain is commenced or threatened with respect to the Premises, such matters be governed by the Purchase Agreement; provided, however, in the event the Purchase Agreement is terminated in accordance Section 10.1 of the Purchase Agreement, with any award or compensation with respect to such Eminent Domain shall belong to Landlord (less any award or compensation allocable to any lost profits or costs incurred by Tenant during the Term of this Lease for the period prior to the termination of the Purchase Agreement and this Lease).

**ARTICLE 17
DEFAULTS**

Section 17.1 Defaults of Tenant.

(a) Tenant shall be in "**Default**" if (i) Tenant shall not have paid Rent or any other amount payable by Tenant pursuant to this Lease within ten (10) days following Tenant's receipt of written notice from Landlord stating that such payment was not made prior to its due date (a "**Monetary Default**"); (ii) Tenant shall not have performed any of the other covenants, terms, conditions or provisions of this Lease within thirty (30) days after Tenant's receipt of written notice specifying such failure; provided, however, that with respect to those failures that cannot with due diligence be cured within such thirty (30)-day period, Tenant shall not be deemed to be in default hereunder if Tenant commences to cure such default within such thirty (30)-day period and thereafter continues the curing of such default with all due diligence, but in any event not to exceed sixty (60) days from the commencement of such cure; (iii) Tenant shall fail to maintain any or all of the insurance required hereunder and such failure shall continue for three (3) business days after written notice thereof given by Landlord to Tenant; or (iv) Tenant is adjudicated bankrupt or adjudged to be insolvent; a receiver or trustee is appointed for substantially all of the property and affairs of Tenant; Tenant makes an assignment for the benefit of its creditors, files a petition in bankruptcy or insolvency or for reorganization, or makes application for the appointment of a receiver; or any execution or attachment is issued against Tenant or substantially all of the property of Tenant, whereby the Premises or the Building and related improvements thereon are taken or occupied or attempted to be taken or occupied by someone other than Tenant or any subtenant of Tenant, except as may be permitted herein, and such adjudication, appointment, assignment, petition, execution or attachment shall not be set aside, vacated, discharged or bonded within sixty (60) days after the issuance of the same (any of the Defaults in the immediately preceding clauses (ii), (iii) and (iv), a "**Non-Monetary Default**").

(b) If Landlord shall claim that Tenant is in Default, Landlord shall have the right to institute from time to time an action or actions (i) to recover actual damages (exclusive of punitive, consequential or special damages), (ii) for injunctive and/or other equitable relief, or (iii) to recover possession of the Premises and terminate this Lease.

(c) In the event of any termination of this Lease in accordance with the provisions of Section 17.1(b) above, Tenant shall pay to Landlord all Rent, and other sums required to be paid by Tenant to and including the date of such termination, reentry or repossession.

Section 17.2 Defaults of Landlord.

(a) If Landlord shall fail to observe or perform any provision hereof and such failure shall continue for thirty (30) days after written notice to Landlord detailing such failure, then a Default of Landlord shall exist under this Lease, provided, however, that in the case of any such failure which cannot with diligence be cured within such thirty (30)-day period, if Landlord shall commence promptly to cure the same within such thirty (30)-day period and thereafter prosecute the curing thereof with diligence, the time within which such failure may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence.

(b) If a Default of Landlord shall have occurred and be continuing, beyond the notice, grace and cure periods set forth above, Tenant may terminate this Lease by giving Landlord notice of Tenant's intention to do so. Upon the fifteenth (15th) day next succeeding the giving of such notice, this Lease and the Leasehold Estate shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date herein fixed with the expiration of the Term of this Lease, all rights of Landlord and obligations of Tenant hereunder shall expire and terminate, and Rent shall be apportioned as of such date and Landlord shall promptly refund to Tenant any Rent theretofore paid which is allocable to the period subsequent to such date.

Section 17.3 Cross-Default. Any default by Landlord, as seller, under the Purchase Agreement beyond any notice and cure period set forth therein shall be a Default by Landlord hereunder. Any default by Tenant, as buyer, under the Purchase Agreement beyond any notice and cure period set forth therein shall be a Default by Tenant hereunder. Any material Default by Landlord under this Lease beyond any notice and cure period set forth herein shall be a default by Landlord, as seller, under the Purchase Agreement. Any material Default by Tenant under this Lease beyond any notice and cure period set forth herein shall be a default by Tenant, as buyer, under the Purchase Agreement.

Section 17.4 Rights to Cure. Each party shall have the right, but shall not be required, to pay such sums or do any act which requires the expenditure of monies which may be necessary or appropriate by reason of the Default of the other party to perform any of the provisions of this Lease. In the event of the exercise of any such right by Landlord, Tenant agrees to pay to Landlord forthwith upon demand all such sums, as Additional Rent, together with Interest from the date advanced by Landlord until repaid by Tenant at the rate set forth in Article 36 above. In the event of the exercise of such right by Tenant, Landlord agrees to pay to Tenant forthwith upon demand all such sums, together with Interest from the date advanced by Tenant until repaid by Landlord at the rate set forth in Article 36 above. Alternatively, Tenant may, at its election, and upon notice to Landlord, deduct such sum together with interest thereon from the next succeeding payment or payments of Rent, and such deduction shall in no way be considered a failure on the part of Tenant to pay such Rent.

ARTICLE 18 WAIVERS; REMEDIES

Failure of Landlord or Tenant to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but such payment shall only be deemed a partial payment on account. Notwithstanding any remedies expressly set forth in this Lease (except as otherwise expressly set forth herein), all rights and remedies provided for in this Lease or otherwise existing at law or in equity are cumulative, and a party's exercise of any right or remedy under this Lease or under applicable

law is not exclusive and shall not preclude such party from exercising any other right or remedy that may be available to it at law or in equity.

ARTICLE 19 LIMITATION OF LIABILITY

Section 19.1 Landlord's Liability. Notwithstanding anything to the contrary herein provided, if Landlord or any successor in interest of Landlord shall be a mortgagee, or if Landlord or any successor in interest of Landlord shall be an individual, joint venture, tenancy in common, firm, limited liability company, corporation or partnership, general or limited, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such mortgagee or such individual or on the part of the members of such firm, limited liability company, corporation, partnership or joint venture with respect to any of the terms, covenants and conditions of this Lease, and Tenant shall look solely to the Reversionary Estate for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by Landlord, such exculpation of personal liability to be absolute and without any exception whatsoever.

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Section 19.2 Tenant's Liability. Notwithstanding anything to the contrary herein provided but subject to Section 19.4, if Tenant or any successor in interest of Tenant shall be a mortgagee, or if Tenant or any successor in interest of Tenant shall be an individual, joint venture, tenancy in common, firm or partnership, general or limited, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of such mortgagee or such individual or on the part of the members of such firm, partnership or joint venture with respect to any of the terms, covenants and conditions of this Lease, and Landlord shall look solely to the Leasehold Estate for the satisfaction of each and every remedy of Landlord in the event of any breach by Tenant or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by Tenant, such exculpation of personal liability to be absolute and without any exception whatsoever.

Section 19.3 Parties in Interest. The terms "**Landlord**" and "**Tenant**" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be; provided that in the event of any transfer of title by Landlord of the Premises, any amount then due and payable to Tenant by Landlord (or the then grantor), and any other obligation then to be performed by Landlord (or the then grantor) under this Lease, either shall be paid or performed by Landlord (or the then grantor) or such payment or performance assumed by the transferee.

ARTICLE 20 FORCE MAJEURE

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes; lockouts, civil disorder; inability to procure materials; failure of utilities; restrictive governmental law or regulation; government action; riot; insurrection; war; fuel shortage; casualty; act of God; undue and unusual delay in acting or failure to act by any applicable governmental authority or any department or employee thereof or any other governmental or quasi-governmental entity whose action may be required for any purpose ("**Force Majeure**"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything herein to the contrary, the provisions of this Article 20 shall not be applicable with respect to: (i) the payment of money, and (ii) the parties' obligations pursuant to the Purchase Agreement, including, but not limited to, closing on the Final Closing Date.

ARTICLE 21 NOTICES

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may

from time to time designate by notice given to the other in accordance with this Article 21. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of refusal or acceptance shall be deemed the date of service thereof). Notices shall be sent:

If to Landlord: PRIDE ONE CHERRY TREE, LLC &
IPN-PRIDE INVESTMENT HOLDINGS, LLC
Attn: Douglas C. Leohr, Manager
387 Medina Road, Suite 400
Medina, Ohio 44256
Email: dleohr@prideone.cc

The Law Offices of Phillip A. Helon
Attn: Phillip A. Helon, Esq.
2211 Medina Road, Suite 100
Medina, Ohio 44256
Email: pah@helonlaw.com

If to Tenant: The Procaccianti Group, LLC
1140 Reservoir Avenue
Cranston, Rhode Island 02920-6320
Attention: Ron M. Hadar, General Counsel
E-mail: rhadar@procaccianti.com

With a copy to: Morris, Manning & Martin, LLP
3343 Peachtree Road, N.E.
Suite 1600
Atlanta, Georgia 30326
Attention: Catherine E. Morgen
E-mail: cmorgen@mmmlaw.com

ARTICLE 22 CERTIFICATES

Either party shall, without charge, at any time and from time to time hereafter, within fifteen (15) days after written request of the other, certify by written instrument duly executed and acknowledged to the requesting party and any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended (and, if it shall have been supplemented or amended, specifying the manner in which it has been supplemented or amended); (b) as to whether this Lease is in full force and effect (and, if it is alleged that this Lease is not in full force and effect, specifying the reasons therefor); (c) as to the date to which Rent has been paid; (d) as to whether any condition exists which constitutes a default hereunder or which, but for the passage of time or the giving of notice or both, would result in a default by Landlord or Tenant hereunder (and, if such condition exists, specifying the nature thereof); (e) as to whether there exist any offsets, counterclaims or defenses thereto on the part of the other party; (f) as to the commencement and expiration dates of the Term of this Lease and the number of outstanding options to extend the Term of this Lease; (g) as to whether or not all work required to be performed by Landlord and/or Tenant with respect to the construction and development of any improvement(s) on the Premises has been performed in accordance with the terms of this Lease; and (h) as to such other matters as reasonably may be requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

**ARTICLE 23
GOVERNING LAW**

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State in which the Premises are located, without giving effect to the principles of conflicts of law.

**ARTICLE 24
NO HOLDOVER**

Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. In the event Tenant does not immediately surrender the Premises upon expiration or earlier termination of this Lease, then notwithstanding anything herein or the Purchase Agreement to the contrary, Landlord shall be entitled to pursue any and all remedies against Tenant which may be available at law and/or in equity (excluding, however, punitive, consequential and special damage)s.

**ARTICLE 25
WAIVER OF LANDLORD'S LIEN**

Landlord does hereby waive any right it may have pursuant to applicable law to distraint trade fixtures or any property of Tenant and any landlord's lien or similar lien upon trade fixtures or any other property of Tenant.

**ARTICLE 26
WAIVER OF JURY TRIAL**

To the maximum extent permitted by applicable law, Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connection with this Lease, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

**ARTICLE 27
SEVERABILITY**

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remaining terms, covenants, conditions and provisions shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE 28
MEMORANDUM OF LEASE**

Concurrent with the execution and delivery of this Lease, Landlord and Tenant shall execute and deliver, in recordable form, a Memorandum of Ground Lease, setting forth a description of the Premises, the Term of this Lease and any other portions thereof, excepting the rental provisions, in substantially the form attached to this Lease as **Exhibit B** ("**Memorandum of Lease**").

**ARTICLE 29
INTERPRETATION; MISCELLANEOUS**

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by Landlord and Tenant.

There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation, or other legal entity may acquire or hold, directly or indirectly, this Lease or the leasehold estate and the fee estate in the Premises or an interest in such fee estate.

**ARTICLE 30
ENTIRE AGREEMENT**

No oral statement or prior written matter shall have any force or effect. Landlord and Tenant agree that neither party is relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

**ARTICLE 31
PARTIES**

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns.

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**ARTICLE 32
BROKERS' COMMISSIONS**

Tenant and Landlord represent and warrant to each other that neither has had any negotiations, dealings or conversations with any broker or agent, licensed or otherwise in connection with this Lease. Landlord and Tenant each covenant to protect, defend, hold harmless and indemnify the other from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any other claim by any brokers or agents for brokerage commissions relating to this Lease alleged to be due because of negotiations, dealings or conversations with the indemnifying party.

**ARTICLE 33
ATTORNEYS' FEES**

In the event of any suit, action, or other proceeding at law or in equity (collectively, "**action**"), by either party hereto against the other, by reason of any matter arising out of this Lease, the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees (to be fixed by the Court) for the maintenance or defense of said action, as the case may be.

**ARTICLE 34
RENT PAYMENTS**

If Landlord's interest in this Lease shall pass to another, or if the Rent hereunder shall be assigned, or if a party other than Landlord shall become entitled to collect the rent due hereunder, then notice thereof shall be given to Tenant by Landlord in writing, or, if Landlord is an individual and shall have died or become incapacitated, by Landlord's legal representative, accompanied by due proof of the appointment of such legal representative. Until such notice and proof shall be received by Tenant, Tenant may continue to pay the Rent due hereunder to the one to whom, and in the manner in which, the last preceding installment of Rent hereunder was paid, and each such payment shall fully discharge Tenant.

Tenant shall not be obligated to recognize any agent for the collection of Rent or otherwise authorized to act with respect to the Premises until notice of the appointment and the extent of the authority of such agent shall be given to Tenant by the one appointing such agent.

**ARTICLE 35
LANDLORD TRANSFERS**

Landlord may transfer its interest in this Lease to any party to whom Landlord transfers the Premises.

ARTICLE 36
INTEREST

For the purposes of this Lease, “**Interest**” shall mean the lesser of the WSJ Prime Rate plus four percent (4%) per annum, or the maximum rate allowed by law. In the event Landlord or Tenant fails to pay any amount when due to the other party within ten (10) days after notice that payment is late, the defaulting party shall pay the non-defaulting party such amount plus Interest accruing from the original date such amount was due until such amount is ultimately paid.

[Remainder of Page Blank-Signatures on Following Page]

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD:

PRIDE ONE CHERRY TREE, LLC,
an Ohio limited liability company

By: IPN-PRIDE INVESTMENT HOLDINGS, LLC,
an Ohio limited liability company
Its: Manager

By: /s/ Joseph Moffa

Name: Joseph Moffa
Title: Manager

IPN-PRIDE INVESTMENT HOLDINGS, LLC,
an Ohio limited liability company

By: /s/ Joseph Moffa

Name: Joseph Moffa
Title: Manager

TENANT:

PHR CHERRY PROPCO, LLC, a Michigan limited liability
company

By: /s/ James A. Procaccianti (seal)
Name: James A. Procaccianti
Title: Authorized Signer

Signature Page to Ground Lease

SCHEDULE 3.1

RENT

\$100 per month payable in advance on the 5th of each month.
All principal and interest due under the TPG Loan.
Reimbursement of Property Insurance as contemplated by Section 14.2

Schedule 3.1

EXHIBIT A

Legal Description of Land

Land in the Township of East Bay, Grand Traverse County, MI, described as follows:

Unit Nos. 1 through 77, Cherry Tree Condominium, according to the Master Deed recorded in Liber 2006C, Page 00067, and Amendments thereto, First Amendment to Master Deed recorded in Instrument No. 2008C-00015 and designated as Grand Traverse County Condominium Subdivision Plan No. 317, together with rights in general common elements and limited common elements as set forth in above Master Deeds and as described, in ACT 59 of Public Acts of 1978, and amendments thereto.

Excepting:

An undivided 1/4 interest in Unit 2 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 2 Cherry Tree Condominium being Fractional ID "C and "G",
An undivided 1/4 interest in Unit 3 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 3 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 4 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 9 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 23 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 24 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 37 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 45 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 72 Cherry Tree Condominium being Fractional ID "B" and "F".

Exhibit A

EXHIBIT B

Form of Memorandum of Ground Lease

PREPARED BY AND WHEN
RECORDED RETURN TO:
Catherine Morgen
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is made and entered into as of _____ (the "**Effective Date**"), by and between PRIDE ONE CHERRY TREE, LLC, an Ohio limited liability company, and IPN-PRIDE INVESTMENT HOLDINGS, LLC, an Ohio limited liability company (collectively, "**Landlord**"), whose address is 387

Date: _____, 20__

Notary Public
Print
Name: _____

My Commission Expires: _____

[Official Seal]

PROMISSORY NOTE

Amount: \$7,689,593.65

Date: June 3, 2021

Due: As set forth below

FOR VALUE RECEIVED, PRIDE ONE CHERRY TREE, LLC, an Ohio limited liability company and **IPN-PRIDE INVESTMENT HOLDINGS, LLC**, an Ohio limited liability company, (collectively, "Borrower") promises to pay to the order of **PHR OP LENDER SUB, LLC**, a Michigan limited liability company ("Lender"), the sum of Seven Million Six Hundred Eighty-Nine Thousand Five Hundred Ninety-Three and 65/100 Dollars (\$7,689,593.65) and such other amounts as Lender has advanced to Borrower, together with interest on the unpaid balance from time to time outstanding at the rate of 5.785% per annum. During the period of any default, the rate of interest shall be increased to 10.000% per annum.

1. **REPAYMENT.** Principal and interest shall be payable under this Note as follows:

(a) Lender acknowledges that this Promissory Note is made pursuant to Section 2.4 of that certain Purchase and Sale Agreement by and between Borrower, as Seller, and PHR Cherry Propco, LLC, a Michigan limited liability company, as assignee of The Procaccianti Group, LLC ("**Buyer**"), as Buyer, dated April 28, 2021 (as amended and assigned, the "**Purchase Agreement**"), and that in accordance with Section 11.2(a) of the Purchase Agreement, in the event of a default by Buyer under the Purchase Agreement and the termination thereof by Seller, in addition to any other rights and remedies available to Borrower, as Seller under the Purchase Agreement, Lender agrees to reduce the balance due under this Promissory Note by \$1,000,000.00.

(b) Subject to the terms and conditions herein, commencing on June 3, 2021, and continuing on the 5th day of each month thereafter, payments shall be made in the amount equal to the sum of (i) Fifty Four Thousand One Hundred Forty-One Dollars and 00/100 (\$54,141.00) Dollars (which is the principal balance amortized over a period of 240 months) plus (ii) accrued and unpaid interest thereon, which shall be made until the earlier of (A) sixty (60) days following the termination of the Purchase Agreement prior to the Final Closing (provided, however, if the Purchase Agreement is terminated due to an event of default by Borrower, as Seller thereunder, subsection (D) shall be applicable, and, if applicable, subject to subsection (B) hereof), (B) six (6) months following the termination of the Purchase Agreement prior to the Final Closing if terminated due to an event of default by the Buyer under the Purchase Agreement, (C) the Final Closing (as defined in the Purchase Agreement), and (D) the date of acceleration as set forth in Section 2 below ("**Maturity Date**") or the sooner repayment of this Promissory Note. During the term of that certain Ground Lease entered into in accordance with the Purchase Agreement by and between Borrower, as Landlord, and Buyer, as Tenant dated of even date herewith (the "**Ground Lease**") payments of principal and interest shall be made to Lender directly by Buyer, as Tenant under the Ground Lease, on behalf of Borrower. Any principal and accrued interest not previously paid shall be paid in full on by Borrower on the Maturity Date.

2. **DEFAULT.** There shall exist a default under this Promissory Note in the event of the failure to make any payment hereunder within five (5) days after when due and after written notice from Lender to Borrower. At any time after the occurrence of any of the foregoing events of default or upon any default by the Borrower under the Mortgage, entire principal of this Promissory Note remaining unpaid at that time, together with the accrued interest thereon, shall, at the election of the holder hereof and without notice of such election and without demand or presentment, become immediately due and payable at the aforesaid place of payment, anything contained herein or any other agreement securing or evidencing the indebtedness hereunder to the contrary notwithstanding, and all costs and expenses of collection, including a reasonable attorney fee, shall be added to and become part of the total indebtedness. The holder hereof may, at any time upon or after acceleration or maturity of this Promissory Note, hold and apply its own indebtedness or liability to the undersigned in payment of the indebtedness due hereunder.

3. **SECURITY.** This Note is secured by that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of even date herewith, executed by Borrower for the benefit of Lender (the "Mortgage"), creating a lien on certain real property (the "Premises") legally described in Exhibit A attached to the Mortgage; statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

4. **ACCELERATION.** In the event of default, the failure of Lender to promptly exercise its right to declare the indebtedness remaining unpaid hereunder to be immediately due and payable shall not constitute a waiver of that right while the default continues, nor a waiver of that right in connection with any future default on the part of the undersigned. Acceptance of partial payments shall not be deemed to constitute an accord and satisfaction, a waiver or a compromise of any sum or obligation owing or default existing hereunder, and shall instead be deemed a payment on account.

5. **WAIVER.** The makers, endorsers, sureties and guarantors hereof and all other parties who may become liable for all or any part of this obligation, severally waive presentment for payment, protest, notice of protest and of non-payment and diligence in the enforcement or collection hereof, and hereby expressly consent to any number of renewals or extensions of the time of payment thereof. Any renewals or extensions may be made without notice to any of those parties and without affecting their liability, and they shall not be released from liability on this Promissory Note by reason of any forbearance or extension of time granted to, or the failure of the holder to demand strict performance by, the undersigned or any subsequent owner or owners of the property mortgaged, assigned or pledged as security for this obligation, with or without notice to or the consent of any of those parties.

6. **PREPAYMENT.** This Promissory Note may be prepaid, in whole or in part, without penalty. Prepayments shall be applied first upon accrued but unpaid interest, and then in reduction of the outstanding principal balance. No prepayment shall prepay, postpone or defer any regular installment due hereunder, which shall continue to be made in all events.

7. **USURY.** It is not intended by this Promissory Note to impose upon the maker any obligation to pay interest in excess of the maximum rate of interest permitted by law in the State of Michigan by written stipulation with the undersigned, taking into consideration all possible exceptions to any restrictions thereon. Any interest determined to exceed that maximum rate of interest shall automatically abate to the extent of the excess. Moreover, if the holder hereof should in good faith and by reference to the provisions of law or an adjudication determine that the maximum permissible rate of interest has been exceeded, the holder shall thereupon have the option of declaring the unpaid balance of this Promissory Note to be due and payable in full.

8. **JOINT AND SEVERAL.** If more than one person or party shall now or hereafter join in the execution of this Promissory Note, the liability of all such persons and parties shall be both joint and several. In seeking payment of the Promissory Note, the holder may proceed against or otherwise deal with any individual maker independently and separately from any other maker.

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9. **GOVERNING LAW.** This Promissory Note and the liability of all parties hereunder shall be governed by the laws of the State of Michigan, where this Promissory Note has been delivered for value.

[Balance of Page Intentionally Blank; Signatures on Following Page]

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IN WITNESS WHEREOF, the Borrower has executed and delivered this Promissory Note as of the date first referenced above.

BORROWER:

PRIDE ONE CHERRY TREE, LLC,
an Ohio limited liability company

By: IPN-PRIDE INVESTMENT HOLDINGS, LLC, an Ohio
limited liability company, its Manager

By /s/ Joseph Moffa

Name: Joseph Moffa

Title: Manager

IPN-PRIDE INVESTMENT HOLDINGS, LLC,
an Ohio limited liability company

By: /s/ Joseph Moffa

Name: Joseph Moffa

Title: Manager

Acknowledgement of Section 1(a):

LENDER:

PHR OP LENDER SUB, LLC, a Michigan limited liability
company

By: _____ (seal)

Name: _____

Title: _____

[Signature Page to Promissory Note]

DRAFTED BY AND
WHEN RECORDED RETURN TO:

Scott A. Steinhoff, Esq.
Dykema Gossett PLLC
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304

MORTGAGE

**ASSIGNMENT OF LEASES AND RENTS
AND FIXTURE FILING**

THIS MORTGAGE (“Mortgage”) made as of June 3, 2021, **PRIDE ONE CHERRY TREE, LLC**, an Ohio limited liability company and **IPN-PRIDE INVESTMENT HOLDINGS, LLC**, an Ohio limited liability company (collectively, “Mortgagor”), whose address is 2211 Medina Road, Suite 100, Medina, OH 44256, in favor of **PHR OP LENDER SUB, LLC**, a Michigan limited liability company (“Mortgagee”), whose address is 1140 Reservoir Ave., Cranston, RI 02920-6320.

RECITALS

As of this date, Mortgagor made and delivered a Promissory Note (the “Note”) to Mortgagee in the initial principal amount of Seven Million Six Hundred Eighty-Nine Thousand Five Hundred Ninety Three and 65/100 Dollars (\$7,689,593.65). As security for repayment of all sums due under the Note, Mortgagee has required and Mortgagor has agreed to grant to Mortgagee this mortgage on a parcel of property located in Grand Traverse County, Michigan as more particularly described on the attached Exhibit A.

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NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure (i) the payment of the Indebtedness (as such term is defined below) and Impositions (as such term is defined below) and the interest thereon, (ii) the payment of any advances or expenses of any kind incurred by Mortgagee pursuant to the provisions of or on account of the Note or this Mortgage, (iii) the repayment of all Indebtedness arising under or in connection with the Note, (iv) the performance of the obligations of the Mortgagor under the Note, and (v) the performance of the obligations of Mortgagor under the Note, the parties hereby agree as follows:

ARTICLE 1

GRANTING PROVISIONS

The Mortgagor does hereby grant, bargain, sell, release, convey, assign, transfer, grant a security interest in, mortgage and warrant to Mortgagee, its successors and assigns forever, all of the estate, title and interest of Mortgagor, in law or equity, in and to (a) the certain real estate located in Grand Traverse County, Michigan, more particularly described in **Exhibit A** attached hereto, and (b) such real estate and the buildings and improvements now existing, being constructed, or hereafter constructed or placed thereon, all of the rights, privileges, licenses, easements and appurtenances belonging to such real estate (including all heretofore or hereafter vacated streets or alleys which are about such real estate), and all fixtures of every kind whatsoever located in or on, or attached to, and used or intended to be used in connection with or with the operation of such real estate, buildings, structures or other improvements thereon or in connection with any construction now or to be conducted or which may be conducted thereon, together with all building materials and equipment now or hereafter delivered to such real estate and intended to be installed therein; any rental revenues, payments, repayments, income, profits, charges, accounts, general intangibles, and moneys derived by Mortgagor from the lease, sublease, sale, rental or other disposition of such property, including, but not limited to, all rights conferred by Act No. 210 of the Michigan Public Acts of 1953, as amended (MCLA 554.231 et seq.), and Act No. 228 of the Michigan Public Acts of 1925 as amended (MCLA 554.211 et seq.) (“Rents”) and subject to the terms and conditions herein, the proceeds from any insurance proceeds or condemnation award pertaining thereto (the foregoing provisions shall constitute an absolute and present assignment of the Rents and other benefits derived from the Property, subject however to the conditional permission given to Mortgagor to collect and use such rentals, revenues and other benefits that are hereinabove provided until the occurrence of an Event of Default and the existence or exercise of such right shall not

operate to subordinate this assignment to any subsequent assignment, in whole or in part, by the Mortgagor); and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and the proceeds of any of the foregoing (all of the foregoing being hereinafter collectively called "Property").

The Mortgagor further hereby grants, conveys, and assigns to Mortgagee, its successors and assigns all rents, issues and profits of any of the foregoing and all proceeds of the conversion (whether voluntary or involuntary) of any of the same into cash or liquidated claims, including, without limitation, proceeds of Insurance and condemnation awards.

TO HAVE AND TO HOLD the Property hereby conveyed, granted and assigned, unto Mortgagee, and its successors and assigns forever, for the uses and purposes herein set forth.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 **General.** Mortgagor represents and warrants that it is the sole lawful owner in fee simple of the Property, that its title in and to the Property is free, clear and unencumbered except for those encumbrances, covenants and restrictions of record, the Ground Lease (defined below) and hotel guests in occupancy as of the date of this Mortgage and except for real estate taxes and assessments not yet due and payable; that it has good legal right, authority, and full power to sell and convey the same and to execute this Mortgage; that Mortgagor will make any further assurances of title that Mortgagee may reasonably require; that Mortgagor will warrant and defend the Property against all claims and demands whatsoever, and that Mortgagor will keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed.

COVENANTS

Mortgagor hereby covenants and agrees with Mortgagee as follows:

2.2 **Indebtedness.** Mortgagor will promptly pay and perform, or promptly cause to be paid and performed, when due, the following obligations (hereinafter collectively called "Indebtedness"):

(a) each and every term, provision, condition, obligation, covenant, and agreement of Mortgagor set forth in this Mortgage and the Note, and in any amendments, modifications or restatements to any of the foregoing;

(b) all Protective Advances. The words "Protective Advance" mean an indebtedness or obligation that is secured by this Mortgage and that arises because Mortgagee makes an expenditure or expenditures (i) to fulfill or perform an obligation of Mortgagor under this Mortgage, with respect to the Property, that Mortgagor has failed to fulfill or perform, (ii) to preserve the priority of this Mortgage and the value of the Property, or (iii) for reasonable attorney fees or other expenses that are incurred in exercising a right or remedy under this Mortgage or that Mortgagor has agreed in this Mortgage to reimburse to Mortgagee; and

(c) Mortgagor's obligations under the Purchase Agreement.

2.3 **Impositions.** Mortgagor will pay, or cause to be paid, before the same become delinquent, all of the following (hereinafter collectively called "Impositions"): all real estate taxes, personal property taxes, assessments, water and sewer rates and charges, and all other governmental levies and charges, of every kind and nature whatsoever, general and special, ordinary and extraordinary, which are assessed, levied, confirmed, imposed or become a lien upon or against the Property or any portion thereof, and all taxes, assessments and charges upon the rents, issues, income or profits of the Property, or which become payable with respect thereto or with respect to the occupancy, use or possession of the Property, whether such taxes, assessments or charges are levied directly or indirectly. Mortgagor shall deliver proof of payment of all such Impositions to Mortgagee upon the request of Mortgagee. Notwithstanding any provision to the contrary in this Section 2.3, any tax or special assessment which is a lien on the Property may be paid in installments, provided that each installment is paid on or prior to the date when the same is due without the imposition of any penalty.

2.4 **Compliance with Laws.** Mortgagor will comply with all federal, state and local laws, regulations and orders to which the Property or the activities conducted on the Property are subject.

2.5 Condition of Property. Mortgagor will maintain the Property in good order and condition and make all repairs necessary to that end, will suffer no waste to the Property, and will cause all repairs and maintenance to the Property to be done in a good and workmanlike manner.

2.6 Improvements. Mortgagor will not remove or materially change any improvements once installed or placed on the Property, or suffer or permit others to do so.

2.7 Insurance. Mortgagor at its sole cost and expense shall provide and keep in force at all times with respect to the Property (with such deductibles as may be reasonably satisfactory to Mortgagee, from time to time, in its reasonable discretion): (i) insurance against loss of or damage to the Improvements by fire and other hazards covered by so-called "extended coverage" insurance, with a replacement cost endorsement, and such other casualties and hazards as Mortgagee shall reasonably require from time to time; (ii) flood insurance in the maximum available amount if the Improvements are located in a flood hazard area; (iii) business interruption insurance; (iv) boiler and machinery insurance; (v) comprehensive general public liability insurance against claims for bodily injury, death or property damage in customary and adequate amounts; (vi) workers' compensation insurance for all employees working at the Property, and, while the Property is under construction or repair, builder's risk completed value insurance against "all risks of physical loss," covering the total value of work performed and equipment, supplies and materials furnished, and containing the "permission to occupy upon completion of work or occupancy" endorsement; and (vii) such other Insurance on the Property (including, without limitation, increases in amounts and modifications of forms of insurance existing on the date hereof), as Mortgagee may reasonably require from time to time. The policies of insurance required by this Section 2.7 may be provided in umbrella policies which insure any and all real or personal property in which Mortgagor has an interest in addition to the Property. Mortgagor shall deliver to Mortgagee all insurance policies and certificates that are requested by Mortgagee. At least thirty (30) days prior to the expiration of each policy required to be provided by Mortgagor, Mortgagor shall deliver certificates of renewal policies to Mortgagee with appropriate evidence of payment of premiums therefore. All Insurance policies required by this Mortgage shall (1) include effective waivers by the insurer of all rights of subrogation against any named insured and any other loss payee; (2) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Mortgagee of written notice thereof; and (3) be reasonably satisfactory in all other respects to Mortgagee. Mortgagor shall not permit any activity to occur or condition to exist on or with respect to the Property that would wholly or partially invalidate any of the insurance thereon. Mortgagor shall give prompt written notice to Mortgagee of any damage to, destruction of or other loss in respect of the Property, irrespective of whether any such damage, destruction or loss gives rise to an insurance claim.

All proceeds of the insurance required to be obtained by Mortgagor hereunder, other than those relating to the comprehensive general public liability insurance, shall be held in trust for and paid promptly to Mortgagee, and Mortgagee may deduct from such proceeds any expenses, including, without limitation, reasonable legal fees, incurred by Mortgagee in connection with adjusting and obtaining such proceeds (the balance remaining after such deduction being hereinafter referred to as the "Net Insurance Proceeds"). Mortgagee may, at its option, either: (1) apply the Net Insurance Proceeds in reduction or satisfaction of all or any part of the Indebtedness, whether then matured or not, in which event Mortgagor shall be relieved of its obligation to maintain and restore the Property relating to such proceeds to the extent that Mortgagee so applies such Net Insurance Proceeds; or (2) release the Net Insurance Proceeds to Mortgagor and Mortgagee shall apply any such Net Insurance Proceeds to the restoration or reconstructing of the Property.

Without limiting Mortgagee's rights under Section 3.9 of this Mortgage, if Mortgagor shall fail to keep the Property insured in accordance with this Mortgage and the Note, Mortgagee may, but shall not be obligated to, do so, upon ten (10) days' prior written notice to Mortgagor and if Mortgagor fails to cure such insurance deficiency. Mortgagor shall reimburse Mortgagee on demand for amounts incurred or expended therefore, with interest thereon pursuant to Section 3.9 hereof, and all such amounts incurred or expended, and all such interest thereon, shall be additional Indebtedness of Mortgagor secured hereby.

Notwithstanding the foregoing, Mortgagee acknowledges and agrees that certain insurance coverages will be provided by Tenant (as hereinafter defined) in accordance with the Ground Lease (as hereinafter defined), and further, to the extent Mortgagor is required to provide a credit to Tenant, as Buyer under the Purchase Agreement (as hereinafter defined) with respect to such casualty or otherwise assign proceeds of casualty insurance pursuant to Section 10.1 of the Purchase Agreement, Mortgagee shall permit proceeds of insurance to be addressed as set forth in the Purchase Agreement and shall not apply Net Insurance Proceeds to the Indebtedness or require restoration or reconstructing of the Property.

2.8 Sale, Transfer or Encumbrance.

(a) Mortgagor will not further mortgage, sell or convey, or grant a deed of trust, pledge, or grant a security interest in any of the Property after the date of this Mortgage, or contract to do any of the foregoing, or execute a land contract or installment sales contract, enter into a lease (whether with or without option to purchase) or otherwise dispose of, further encumber or suffer the encumbrance of any of the Property, whether by operation of law or otherwise. Notwithstanding the foregoing, Mortgagor is expressly permitted to enter into that certain Ground Lease by and between Mortgagor, as landlord, and PHR CHERRY PROPCO, LLC, a Michigan limited liability company ("Tenant"), as tenant (as the same may be amended from time to time, the "Ground Lease"), in connection with that certain Purchase and Sale Agreement by and between Mortgagor, as Seller, and The Procaccanti Group, LLC, as Buyer, dated April 28, 2021 (as amended and assigned, the "Purchase Agreement"). Mortgagee acknowledges and agrees that (i) certain of Mortgagor's covenants and obligations under this Mortgage and under the Note shall be satisfied directly by Tenant under the Ground Lease as set forth therein; (ii) Tenant is an affiliate of Mortgagee; and (iii) in the event of any conflict between the terms of this Mortgage and the Ground Lease, during the term of the Ground Lease, the terms of the Ground Lease shall control.

(b) Mortgagor shall pay and discharge promptly, at Mortgagor's cost and expense, all liens, encumbrances, and charges upon any part of the Property or any interest therein. If Mortgagor shall fail to discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

(c) Mortgagor will not institute or cause to be instituted any proceedings that could change the permitted use of the Property from the use presently zoned, and shall not grant any easements or licenses with respect to the Property.

(d) If a portion of the Property, or any beneficial interest therein, is sold, conveyed, transferred, encumbered, or full possessor rights therein transferred, whether voluntarily, involuntarily or by operation of law, then the Mortgagee may declare all sums secured by this Mortgage to be immediately due and payable, whether or not the Mortgagee has consented or waived its rights in connection with any previous transaction of the same or a different nature. Notwithstanding the foregoing, the foregoing shall not be applicable if a portion or all of the Property is sold, conveyed, transferred, encumbered, or full possessor rights therein transferred by Tenant or an affiliate thereof.

2.9 Eminent Domain.

(a) Mortgagor shall give prompt notice to Mortgagee upon Mortgagor's obtaining knowledge of (i) any interest on the part of any person possessing or who has expressed the intention to possess the power of eminent domain to purchase or otherwise acquire the Property or (ii) the commencement of any action or proceeding to take the Property by exercise of the right of condemnation or eminent domain or of any action or proceeding to close or to alter the grade of any street on or adjoining the Property. At its option Mortgagee may participate in any such actions or proceedings in the name of Mortgagee or, whenever necessary, in the name of Mortgagor, and Mortgagor shall deliver to Mortgagee such instruments as Mortgagee shall request to permit such participation. Mortgagor shall not settle any such action or proceeding, whether by voluntary sale, stipulation or otherwise, or agree to accept any award or payment without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld. The total of all amounts awarded or allowed with respect to all right, title and interest in and to the Property or the portion or portions thereof taken or affected by such condemnation or eminent domain proceeding and any interest thereon (herein collectively called "Award") is hereby assigned to, and shall be paid upon receipt thereof, to Mortgagee and the amount received shall be retained and applied as provided in Paragraph 2.9(b) below, but only to the extent the Award has not previously been pledged and assigned to a priority mortgagee or secured party on the Property.

(b) Upon Mortgagee's receipt of any Award, Mortgagee may, at its option, either: (i) retain and apply the Award toward the Indebtedness; or (ii) subject to such escrow provisions as Mortgagee may require, pay the Award over in whole or part to pay or reimburse Mortgagor for the cost of restoring or reconstructing the Property remaining after such taking ("Remaining Property"). If Mortgagee elects to pay the Award, or any part thereof, over to Mortgagor upon the completion of the restoration or reconstruction of the Remaining Property, any portion of the Award not used for the restoration or reconstruction of the Remaining Property shall, at the option of Mortgagee, be applied in reduction of the Indebtedness; provided, however, that to the extent that such portion of the Award shall exceed the amount required to satisfy in full the Indebtedness, Mortgagee shall pay the amount of such excess to Mortgagor or otherwise as required by law. In no event shall Mortgagee be required to release this Mortgage until the Indebtedness is fully paid and performed,

nor shall Mortgagee be required to release from the lien of this Mortgage any portion of the Property so taken until Mortgagee receives the Award for the portion so taken.

(c) The application of the Award toward payment or performance of any of the Indebtedness shall not be deemed a waiver by Mortgagee of its right to receive payment or performance of the balance of the Indebtedness in accordance with the provisions of this Mortgage, the Note and in any amendments, modifications or restatements to any of the foregoing. Mortgagee shall have the right, but shall be under no obligation, to question or appeal the amount of the Award, and Mortgagee may accept same without prejudice to the rights that Mortgagee may have to question or appeal such amount. In any such condemnation or eminent domain action or proceeding Mortgagee may be represented by attorneys selected by Mortgagee, and all sums paid by Mortgagee in connection with such action or proceeding, including, without limitation, attorneys' fees, court costs, expenses and other charges relating thereto shall, on demand, be immediately due and payable from Mortgagor to Mortgagee and the same shall be added to the Indebtedness and shall be secured by this Mortgage.

(d) Notwithstanding any taking by condemnation or eminent domain, closing of, or alteration of the grade of, any street or other injury to or decrease in value of the Property by any public or quasi-public authority or corporation, the Indebtedness shall continue to bear interest until the Award shall have been actually received by Mortgagee, and any reduction in the Indebtedness resulting from the application by Mortgagee of the Award shall be deemed to take effect only on the date of such receipt thereof by Mortgagee.

2.10 Rights of Mortgagee. If Mortgagor fails to pay when due any Impositions when so required by this Mortgage, or if an Event of Default occurs under this Mortgage, Mortgagee may at its option (but shall not be obligated to) pay such Impositions or cure such default. If Mortgagor fails to pay or perform any of its obligations under this Mortgage with respect to the Property, Mortgagee at its option may (but shall not be obligated to) pay or perform any such obligations of Mortgagor. Mortgagee may enter upon the Property for the purpose of performing any such act, or to inspect the Property. All Impositions paid by Mortgagee and all monies expended by Mortgagee in paying or performing any such obligations of Mortgagor, or curing any Event of Default (including legal expenses and disbursements), shall bear interest at a floating rate per annum equal to six percent (6%) in excess of the Prime Rate of Fifth Third Bank then in effect, and such interest shall be paid by Mortgagor upon demand by Mortgagee and shall be additional Indebtedness secured by this Mortgage.

2.11 Conflict Among Agreements. In the event of any conflict between the provisions of this Mortgage and the provisions of the Note, the provisions of the Note shall prevail.

2.12 Notifications. Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following:

- (a) a fire or other casualty causing damage to the Property in excess of \$5,000;
- (b) receipt of notice of condemnation of the Property or any part thereof;
- (c) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Property;
- (d) receipt of any notice of alleged default from the holder of any lien or security Interest in the Property;
- (e) the commencement of any litigation affecting the Property;
- (f) any change in the occupancy of the Property; or
- (g) any cancellation or expiration of the insurance required to be maintained in accordance with Section 2.7 hereof.

2.13 Hazardous Substances.

(a) As used in this Section: (i) "Hazardous Substances": are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive

materials; (ii) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (iii) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; (iv) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup; (v) the terms "Release", "Owner," "Operator," "Environment," and "Natural Resources" shall have the same meanings and definitions as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. §9601 et seq. and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, provided, however, that as used herein the term Hazardous Substance shall also include: (A) any Pollutant or Contaminant as defined by CERCLA or by any other Environmental Law; (B) any Solid Waste, Hazardous Constituent or Hazardous Waste as defined by, or as otherwise identified by, the Resource Conservation and Recovery Act as amended 42 U.S.C. §6901 et seq. or regulations promulgated thereunder (collectively, "RCRA") or by any other Environmental Law; and (C) crude oil, petroleum, and fractions or distillates thereof; and (vi) the terms "Storage," "Treatment," and "Disposal," shall have the same meanings and definitions as set forth in RCRA.

(b) Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property, which results in the violation of any Environmental Law. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property (I) that is in violation of any Environmental Law, (ii) which creates an Environmental Condition, or (iii) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that materially and adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

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(c) Mortgagor shall promptly give Mortgagee written notice of (i) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Mortgagor has actual knowledge, (ii) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (iii) any condition caused by the presence, use or release of a Hazardous Substance which materially and adversely affects the value of the Property. If Mortgagor learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Mortgagee for an Environmental Cleanup.

(d) The Mortgagor hereby agrees to release, hold harmless, defend and indemnify Mortgagee from, for and against all actual or threatened claims, costs (including but not limited to the cost of investigation, removal, remediation and other cleanup of Hazardous Substances, and reasonable fees of attorneys and other professionals, experts and consultants retained by Mortgagee) demands, orders, losses, lawsuits, liabilities, damages (including without limitation all consequential damages) and expenses whether brought collectively or individually by Mortgagor, a governmental authority or any other third party (all the foregoing hereinafter collectively referred to as "Losses") arising from or related to any of the following:

(i) The past, present or future Release, threatened Release, Storage, Treatment, accumulation, generation, utilization, Disposal, transportation or other handling or migration of any Hazardous Substance on, in, onto, or from the Property.

(ii) The violation or alleged violation of Environmental Laws occurring on or related to the Property.

(iii) Any action taken by Mortgagee to eliminate, prevent, or mitigate the potential adverse impact on the Real Estate or the Mortgagee as a result of or in anticipation of any actual, suspected or threatened violation of Environmental Laws or Release or threatened Release of a Hazardous Substance on, in or from or otherwise affecting the Property; such action may include but need not be limited to, the disposition, distribution, sale, disclaimer, or renunciation or any portion of the Real Estate.

(iv) The costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans.

Clauses (d)(i) through (iv) above are hereinafter referred to collectively as "Environmental Matters."

(e) The Mortgagor hereby agrees that Mortgagee shall be reimbursed directly by the Mortgagor or if a sale of all or part of the Real Estate occurs, from the Real Estate or proceeds thereof for any Losses suffered or sustained or threatened to be suffered or sustained by Mortgagee as a result of Environmental Matters, until such time as the Mortgagee has been reimbursed in full.

(f) This indemnity shall survive the release of the lien of this Mortgage, or the extinguishment of the lien by foreclosure or deed in lieu thereof or by any other action. The foregoing covenant regarding survival shall survive such release or extinguishment. Notwithstanding anything in this Mortgage to the contrary, Mortgagor's indemnity obligations shall not apply to matters relating to or arising from Mortgagee's and/or Tenant's own negligence or misconduct, and under no circumstances shall Mortgagor be liable for punitive or consequential damages.

ARTICLE 3

EVENTS OF DEFAULT

Any of the following events shall be an Event of Default:

3.1 **Cross-Default.** A default beyond any applicable notice and cure period occurs under

- (a) any of the Note or in any amendments, modifications or restatements to any of the foregoing; or
- (b) the Purchase Agreement or any documents entered into in connection with the First Closing (as such term is defined in the Purchase Agreement) by Mortgagor as Seller thereunder; or
- (c) the Ground Lease by Mortgagor, as Landlord thereunder.

3.2 **Breach of Covenants.** Mortgagor defaults in the performance or observance of any of the following covenants:

- (a) to maintain in force the insurance required by Section 2.7 (Insurance) of this Mortgage;
- (b) to comply with any of the notice requirements set forth in Section 2.9 (Insurance), Section 3.8 (Eminent Domain) or Section 2.12 (Notifications) of this Mortgage; or
- (c) any other covenant or agreement contained in this Mortgage and such default continues for 30 days after notice thereof from Mortgagee.

3.3 **Representation or Warranty.** Any representation or warranty of the Mortgagor under this Mortgage or any other Loan Document is untrue or misleading in any material respect.

3.4 **Foreclosure.** A foreclosure proceeding (whether judicial or otherwise) is instituted with respect to any mortgage or lien of any kind encumbering any portion of the Property.

3.5 **Other Obligations.** Any default occurs under any other obligation of Mortgagor to Mortgagee or otherwise described herein as Indebtedness.

3.6 **Waste.** Mortgagor shall fail to pay taxes and/or assessments assessed against the Property or any installment thereof, or any insurance premiums or policies covering the Property, or any part thereof shall constitute waste (although the meaning of the term "waste" shall not necessarily be limited to such nonpayment), as provided by Act No. 236 of the Public Acts of Michigan of 1961, as amended, and shall entitle Mortgagee to all remedies provided for therein. Mortgagor further agrees to and does hereby consent to the appointment of a receiver under such statute, should Mortgagee elect to seek such relief thereunder.

ARTICLE 4

REMEDIES

4.1 Remedies. Upon the occurrence, and until the waiver by Mortgagee, of an Event of Default:

(a) Mortgagee may declare the entire balance of the Indebtedness to be immediately due and payable, and upon any such declaration, the entire unpaid balance of the Indebtedness shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Mortgagee.

(b) Mortgagee may institute a proceeding or proceedings, judicial or otherwise, for the complete or partial foreclosure of this Mortgage under any applicable provision of law.

(c) Mortgagee may institute a proceeding or proceedings to eject Mortgagor from possession of the Property and to obtain possession of the Property by Mortgagee, with or without instituting a foreclosure proceeding.

(d) Mortgagee may sell (the power of sale, if permitted and provided by applicable law, being expressly granted by Mortgagor to Mortgagee) the Property, and all estate, right, title, interest, claim and demand of Mortgagor therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as Mortgagee may deem expedient, or as may be required by applicable law, and In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property. Mortgagee is hereby authorized and empowered to sell the Property, or cause the same to be sold and to convey the same to the purchaser in any lawful manner, including but not limited to that provided by Chapter 32 of the Revised Judicature Act of Michigan, entitled "Foreclosure of Mortgage by Advertisement," which permits the Mortgagee to sell the Property without affording the Mortgagor a hearing, or giving it actual personal notice. The only notice required under such Chapter 32 is to publish notice in a local newspaper and to post a copy of the notice on the Property.

(e) WAIVER: BY CONFERRING THIS POWER OF SALE UPON THE MORTGAGEE, THE MORTGAGOR, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, AFTER AN OPPORTUNITY FOR CONSULTATION WITH ITS LEGAL COUNSEL, HEREBY VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY WAIVES ALL RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES AND UNDER THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN, BOTH TO A HEARING ON THE RIGHT TO EXERCISE AND THE EXERCISE OF THE POWER OF SALE, AND TO NOTICE EXCEPT AS REQUIRED BY THE MICHIGAN STATUTE WHICH PROVIDES FOR FORECLOSURE OF MORTGAGES BY ADVERTISEMENT.

(f) Mortgagee may institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in this Mortgage, the Note and in any amendments, modifications or restatements to any of the foregoing.

(g) Mortgagee may apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Property and the Rents to be vested with the fullest powers permitted under applicable law, as a matter of right and without regard to, or the necessity to disprove, the adequacy of the security for the Indebtedness or the solvency of Mortgagor or any other person liable for the payment of the Indebtedness, and Mortgagor and each such person liable for the payment of the Indebtedness consents or shall be deemed to have consented to such appointment. Nonpayment of any taxes, assessments, insurance or any utility rates levied, assessed or imposed on all or any part of the Property shall constitute waste and entitle the Mortgagee to exercise the remedies afforded by Section 2927 of the Michigan Revised Judicature Act of 1961 (MCL 600.2927), as now or hereafter amended, or by any other statute or law now or hereafter in effect.

(h) To the extent permitted by law, Mortgagee may enter upon the Property, and exclude Mortgagor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other Property; and having and holding the same Mortgagee may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, without interference from Mortgagor; and upon each such entry and from time to time thereafter Mortgagee may, at the expense of Mortgagor and the Property, without interference by Mortgagor and as Mortgagee may deem advisable, (i) insure or reinsure the Property, (ii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon and (iii) in every such case in connection with the foregoing have the right to exercise all rights and powers of Mortgagor with respect to the Property, either in Mortgagor's name or otherwise.

(i) Mortgagee may, with or without entering upon the Property, collect, receive, sue for and recover in its own name all Rents and cash collateral derived from the Property, and may deduct therefrom all costs, expenses and liabilities of every character incurred by Mortgagee in controlling the same and in using, operating, managing, preserving and controlling the Property, and otherwise in exercising Mortgagee's rights under this Mortgage or the other Note, including, but not limited to, all amounts disbursed to pay Impositions, insurance premiums and other charges in connection with the Property, as well as compensation for the services of Mortgagee and its respective attorneys, agents and employees. Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the position of Mortgagee with respect to the balance of the Property; and Mortgagee may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lien holder.

(j) Mortgagee may take all actions, or pursue any other right or remedy, permitted under the Uniform Commercial Code in effect in the State in which the Property is located, under any other applicable law or in equity.

4.2 Mortgagee's Cause of Action. Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, and/or the other Note, as the same become due, without regard to whether or not the principal indebtedness or any other sums secured by this Mortgage, and/or the other Note, shall be due, and without prejudice to the right of Mortgagee thereafter to institute foreclosure or otherwise dispose of the Property or any part thereof, or any other action, for any default by Mortgagor existing at the time the earlier action was commenced.

4.3 Costs and Expenses. There shall be allowed and included as additional Indebtedness secured by the lien of this Mortgage, to the extent permitted by law, all expenditures and expenses of Mortgagee for attorneys' fees, court costs, appraisers' fees, sheriff's fees, documentary and expert evidence, stenographers' charges, publication costs and such other costs and expenses as Mortgagee may deem reasonably necessary to exercise any remedies or to evidence to bidders at any sale of the Property the true condition of the title to or the value of the Property. All such expenditures and expenses shall bear interest at a floating rate per annum equal to six percent (6%) in excess of the Prime Rate of Fifth Third Bank then in effect, and such interest shall be paid by Mortgagor upon demand by Mortgagee and shall be additional Indebtedness secured by this Mortgage.

4.4 Proceeds. The proceeds received by Mortgagee in any foreclosure sale of the Property shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 4.3; second, to all other items which under the terms hereof constitute Indebtedness or Impositions; and, third, any surplus to Mortgagor, its legal representatives or assigns, or to third persons with rights to the proceeds, as their rights may appear.

4.5 Receiver. Without limiting the application of Section 5.1 of this Mortgage, upon, or at any time after, the filing of a suit to foreclose this Mortgage, Mortgagee shall be entitled to have a court appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice to Mortgagor or any other person, without regard to the solvency of the person or persons, if any, liable for the payment of the Indebtedness and without regard to the then value of the Property, and Mortgagee may be appointed as such receiver. The receiver shall have the power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit, as well as during any further times when Mortgagee, absent the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of such period. The court from time to time may authorize the receiver to apply net income in the Receiver's hands in payment in whole or in part of the Indebtedness, or in payment of any tax, assessment or other lien that may be or become superior to the lien hereof or superior to a decree foreclosing this Mortgage, provided such application is made prior to foreclosure sale. The receiver shall have the power to collect the rents, issues, and profits of the Property during the pendency of such foreclosure suit, as well as during any further times when Mortgagee, absent the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and exercise all other powers including those that may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Property during the whole of such period, and may operate the Property, prepare the Property for sale, market the Property, list the Property for sale, negotiate and execute sales agreements for the Property, and sell the Property.

4.6 Rights Cumulative. The rights of Mortgagee arising under the provisions and covenants contained in each of the Mortgage, and/or the other Note shall be separate, distinct and cumulative, and none of them shall be exclusive of the others. In addition to the rights set forth in this Mortgage or any other Note, Mortgagee shall have all rights and remedies now or hereafter existing at law or in equity or by statute. Mortgagee may pursue its rights and remedies concurrently or in any sequence, and no act of Mortgagee shall be construed as an election to proceed under any one provision herein or in such other documents to the exclusion of any other provision,

anything herein or otherwise to the contrary notwithstanding. Without notice to or consent of Mortgagor and without impairment of the lien and rights created by this Mortgage, the Mortgagee may accept from Mortgagor or from any other person or persons, additional security for the indebtedness secured by this Mortgage. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, first, to such additional security, or second, to the security created by this Mortgage, in either case without affecting the lien hereof and the rights conferred hereunder. If Mortgagor fails to comply with this Mortgage, no remedy of law will provide adequate relief to Mortgagee, and Mortgagee shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages.

4.7 No Merger. If Mortgagee shall at any time hereafter acquire title to any of the Property, then the lien of this Mortgage shall not merge into such title, but shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to any of the Property. Furthermore, if the estate of the Mortgagor shall be a leasehold, unless the Mortgagee shall otherwise consent, the fee title of the Property shall not merge with such leasehold, notwithstanding the union of said estates either in the ground lessor or in the fee owner, or in a third party, by purchase or otherwise. If, however, the Mortgagee shall be requested to and/or shall consent to such merger or such merger shall nevertheless occur without its consent, then this Mortgage shall attach to and cover and be a lien upon the fee title or any other estate in the Property demised under the ground lease acquired by the fee owner and the same shall be considered as mortgaged to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein granted.

4.8 Waivers of Mortgagor. Mortgagor hereby waives the benefit of any stay, moratorium, valuation or appraisal law or judicial decision, any defects in any proceeding instituted by Mortgagee with respect to this Mortgage, and/or any of the other Note, and any right of redemption with respect to the Property. Mortgagor waives any right to require marshalling of assets in connection with enforcement of Indebtedness and any right to require the sale of the Property in parcels or in a single parcel to select the order in which parcels are to be sold or to require a minimum bid or "upset" price. Mortgagor waives the right to all notices to which Mortgagor may otherwise be entitled, except those expressly provided for herein. No delay on Mortgagee's part in exercising any power of sale, lien, option or other right with respect to the Property, and no notice or demand which may be given to or made upon the Mortgagor by Mortgagee with respect to any power of sale, lien, option or other right with respect to the Property, shall constitute a waiver thereof, or limit or impair Mortgagee's right to take any action or to exercise any power of sale, lien option, or any other right with respect to the Property without notice or demand, or prejudice Mortgagee's rights as against the Mortgagor in any respect. In addition, no action taken by Mortgagee with respect to the Property shall in any way impair or limit Mortgagee's right to exercise any or all rights or remedies Mortgagee may otherwise have against Mortgagor with respect to any Indebtedness. This Mortgage shall not, in any manner, be construed as a compromise of any Indebtedness. The pledge of, and security interest in, the Property by the Mortgagor to Mortgagee are absolute, unconditional and continuing and will remain in full force and effect until the Indebtedness have been fully paid and satisfied. The pledge of, and security interest in, the Property will extend to and cover renewals of the Indebtedness and any number of extensions of time for payment thereof and will not be affected by any surrender, exchange, acceptance or release by the Mortgagee of any other pledge or any security held by it for any of the Indebtedness. Notice of acceptance of the pledge and security interest, notice of extensions of credit to the Mortgagor from time to time, notice of default, diligence, presentment, protest, demand for payment, notice of demand or protest, notice of making, renewing or extending any of the Indebtedness and any defense based upon a failure of Mortgagee to comply with the notice requirements of the applicable version of Uniform Commercial Code are hereby waived. Mortgagee in its sole discretion may determine the reasonableness of the period which may elapse prior to the making of demand for any payment upon the Mortgagor or any guarantor and it need not pursue any of its remedies against any other party before having recourse against the Property.

THE UNDERSIGNED AND THE MORTGAGEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

ARTICLE 5

MISCELLANEOUS

5.1 Uniform Commercial Code Security Agreement. This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code as adopted in the state where the Property is located for any of the items specified above as part of the Property which may be subject to a security interest pursuant to the applicable version of the Uniform Commercial Code, and Mortgagor hereby grants Mortgagee a security interest in such items. Mortgagor agrees that Mortgagee may file this mortgage instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Mortgage shall be sufficient as a financing statement. In addition, Mortgagor authorizes to Lender to file any financing statements that Mortgagee may require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financing statement and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in such items, including replacements and additions thereto. Upon any Event of Default under this Mortgage, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code and, at Mortgagee's option, may also invoke the remedies provided in this Mortgage. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies in this Mortgage. Mortgagor further authorizes Mortgagee to File UCC Financing Statements on behalf of Mortgagor and Mortgagee with respect to the Property.

5.2 Waiver. No delay or omission by Mortgagee to exercise any right shall impair any such right or be a waiver thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. Each waiver must be in writing and executed by Mortgagee to be effective, and a waiver on one occasion shall be limited to that particular occasion.

5.3 Amendments in Writing. No change, amendment, or modification hereof, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

5.4 Notices. All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing and shall be deemed to have been properly given if sent by U.S. registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

To Mortgagor: PRIDE ONE CHERRY TREE, LLC
387 Medina Road, Suite 400
Medina, OH 44256

IPN-PRIDE INVESTMENT HOLDINGS, LLC
2211 Medina Road, Suite 100
Medina, OH 44256

To Mortgagee: PHR OP LENDER SUB, LLC
1140 Reservoir Ave.
Cranston, RI 02920-6320

or to such other address as Mortgagor or Mortgagee may from time to time designate by written notice.

5.5 Interpretation. The titles to the Sections and Paragraphs hereof are for reference only and do not limit in any way the content thereof. Any words herein which are used in one gender shall be read and construed to mean or Include the other gender wherever they would so apply. Any words herein which are used in the singular shall be read and construed to mean and to include the plural wherever they would so apply, and vice versa.

5.6 Covenant Running With the Land. Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the land and shall be binding upon Mortgagor and its successors and assigns as if they had personally made such agreement.

5.7 Complete Agreement: Counterparts. This Mortgage and the Exhibits are the complete agreement of the parties hereto and supersede all previous understandings relating to the subject matter hereof. This Mortgage may be amended only by an instrument in writing which explicitly states that it amends this Mortgage, and is signed by the party against whom enforcement of the amendment

is sought. This Mortgage may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

5.8 Validity. The provisions of this Mortgage are severable. If any term, covenant or condition of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, the remainder of this Mortgage shall not be invalidated thereby, and this Mortgage shall be construed without such provision.

5.9 Governing Law. This Mortgage for all purposes shall be construed and enforced in accordance with the domestic laws of the State of Michigan.

5.10 Assignment. This Mortgage shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties hereto; however, Mortgagor may not assign any of its rights or delegate any of its obligations hereunder (except as may be expressly set forth in the Ground Lease). Mortgagee may assign this Mortgage to any other person, firm, or corporation provided all of the provisions hereof shall continue In force and effect and, in the event of such assignment, any advances made by any assignee shall be deemed made in pursuance and not in modification hereof and shall be evidenced and secured by, the Note and this Mortgage.

5.11 Interest. In no event shall the interest rate and other charges related to the Indebtedness exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that a court determines that Mortgagee has received interest and other charges hereunder in excess of the highest permissible rate applicable hereto, such excess shall be deemed received on account of, and shall automatically be applied to reduce, the principal balance of the Indebtedness, and the provisions hereof shall be deemed amended to provide for the highest permissible rate. If there is no Indebtedness outstanding, Mortgagee shall refund to Mortgagor such excess.

5.12 Mortgagee's Status. Mortgagor hereby acknowledges and agrees that the undertaking of Mortgagee under this Mortgage is limited as follows:

Mortgagee shall not act in any way as the agent for or trustee of Mortgagor. Mortgagee does not intend to act in any way for or on behalf of Mortgagor with respect to disbursement of the proceeds of the indebtedness secured hereby. Mortgagee's intent in imposing the requirements set forth herein and in the Note is that of a lender protecting the priority of its mortgage and the value of its security. Mortgagee assumes no responsibility for the completion of any Improvements erected or to be erected upon the Property; the payment of bills or any other details in connection with the Property; any plans and specifications in connection with the Property; or Mortgagor's relations with any contractors. This Mortgage is not to be construed by Mortgagor or anyone furnishing labor, materials, or any other work or product for improving the Property as an agreement upon the part of the Mortgagee to assure anyone that such person will be paid for furnishing such labor, materials, or any other work or product; any such person must look entirely to Mortgagor for such payment. Mortgagee assumes no responsibility for the architectural or structural soundness of any improvements on or to be erected upon the Property or for the approval of any plans and specifications in connection therewith or for any improvements as finally completed.

ARTICLE 6

ASSIGNMENT OF RENTS AND LEASES

6.1 Assignment of Rents. To the extent not already assigned to a prior mortgagee, Mortgagor hereby grants, transfers, and assigns and sets over to Mortgagee all right, title and interest in and to, all rents, issues, profits and privileges (now due or which may hereafter become due) of, (a) the property and all improvements at any time constructed thereon or any personal property or fixtures at any time installed or used therein, (b) all leases now or hereafter existing on all or any part of the Property, whether written or oral, or any letting or any agreement for the use or occupancy of any part of the Property which may heretofore have been or which may hereafter be made or agreed to between Mortgagor or any other present, prior, or subsequent owner of the Property, or any interest therein, or which may be made or agreed to by Mortgagee, its successors or assigns, under the powers herein granted and any tenant or occupant of all or any part of the Property ("Leases" and each, "Lease"), including without limitation any Leases existing as of the date of this Mortgage ("Existing Leases"), (c) all rights conferred by and pursuant to Act No. 210 of the Michigan Public Act of 1953, as amended, and Act No. 228 of the Michigan Public Acts of 1925 as amended, and (d) all proceeds of the foregoing, all for the purpose of securing the prompt payment, performance and discharge, when due, of the Indebtedness. So long as no event of default has occurred, Mortgagor may, as trustee for the use and benefit of Mortgagee, collect, receive and accept the rents as they become due and payable; provided, however, that if the rents exceed the payments due under the Note, the Mortgagor may use such excess, first, for the operation and benefit of the

Property and, second, for the general benefit of the Mortgagor, which may include distributing cash to the equity owners of Mortgagor. Upon the occurrence and during the continuance of an event of default, Mortgagee may, at its option, remove the Mortgagor as trustee for the collection of the rents and appoint any other person including, but not limited to, itself as a substitute trustee to collect, receive, accept and use all such rents in payment of the obligations secured hereby, in such order as Mortgagee shall elect in its sole discretion, whether or not Mortgagee takes possession of the Property.

6.2 Representations. Mortgagor hereby represents that (a) except for the Existing Leases and the Ground Lease, there are no leases, subleases or agreements to lease (as lessor or lessee) or sublease (as sublessor or sublessee) all of or any part of the Property; (b) the Existing Leases are valid and enforceable, no default exists under the Existing Leases, Mortgagor is entitled to receive all the rents, issues and profits and to enjoy all the rents and benefits mentioned herein and assigned hereby, and the same have not been sold, assigned, transferred or set over by any instrument now in force, and shall not at any time during the life of this Mortgage be sold, assigned, transferred or set over by Mortgagor or any other person or persons taking under or through Mortgagor, except pursuant to this Mortgage; and (c) Mortgagor has the sole right to sell, assign, transfer, and set over the same and to grant and confer upon Mortgagee the rights, interests, powers and authorities herein granted and conferred.

6.3 Further Assurances. Mortgagor shall from time to time execute any and all instruments reasonably requested by Mortgagee in order to effectuate this Mortgage and to accomplish any of the purposes that are necessary or appropriate in connection with this assignment of the leases of the Property, including without limitation, specific assignments of any Lease or agreement relating to the use and occupancy of the Property or to any part thereof now or hereafter in effect, as may be necessary or desirable in Mortgagee's opinion in order to further secure Mortgagee hereunder.

6.4 Lease Modification. Mortgagor shall not (i) amend, extend or modify any Lease, (ii) waive or release lessees from obligations under any Lease or Existing Lease, (m) terminate or accept from a tenant the termination of any Lease or Existing Lease, (iv) consent to the Mortgage or subleasing of the lessee's interest under any lease or Existing Lease, or (v) evict or institute proceedings to evict any tenant under a Lease or Existing Lease, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.

6.5 Lack of Responsibility. Mortgagee shall not in any way be responsible for any failure to do any or all of the things for which the rights, interests, power or authority are herein granted; and Mortgagee shall not be responsible for, or liable under, any of the agreements undertaken or obligations imposed upon the Mortgagor as lessor under any of the Leases or other agreements with respect to the Property. Mortgagee shall be accountable only for the amounts, if any, actually received by it under the terms of this Mortgage.

6.6 Effective Date. The parties agree that this Mortgage is an actual assignment effective as of the date hereof, and that upon demand made by Mortgagee on the lessor or lessee under any of the Leases or on any person liable for any of the rents, issues, and profits of and from the Property or any part thereof, such lessor or lessee or person liable for any of such rents, issues and profits shall, and is hereby authorized and directed to pay to or upon Mortgagee's order, and without any inquiry of any nature, all rents and other payments then or thereafter accruing under the Leases or any other instrument or agreement, oral or written, granting rights to, and creating an obligation to pay rents, Issues, or profits in connection with the Property.

6.7 Collection and Application of Rents. As long as no Event of Default exists under the Indebtedness secured hereby, Mortgagee agrees not to demand from any lessor or lessee under the Leases or from any other persons liable therefor, any of the rents, issues or profits hereby assigned, but shall permit Mortgagor to collect all such rents, issues and profits from the Property and the Leases on, but not prior to, accrual, and Mortgagor shall apply the same (i) first, to the payment of taxes and assessments upon the Property before penalty or interest is due thereon, (ii) second, to the cost of such insurance and of such maintenance and repairs as are required by the terms of the Note, and (iii) third, to the payment of principal, premium (if any) and interest becoming due on the Note, before using any part of the same for any other purposes; provided, however, that notwithstanding the provisions of this section, all lessors and lessees under the Leases and all persons liable for rents, issues and profits of and from the Property shall comply with any demands for rents made by Mortgagee pursuant to the provisions of this Mortgage without reference to whether or not the same is made in accordance with this section and without further consent from Mortgagor.

6.8 Leases & Defaults. Upon or at any time after the occurrence of an Event of Default under the Indebtedness, Mortgagee may declare all sums secured hereby immediately due and payable and may, at Mortgagee's option, without notice, either in Mortgagee's person or by agent and with or without bringing any action or proceeding, or by any receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Property and each and every part thereof, and in connection therewith, Mortgagee may make, enforce, and modify any of the Leases; fix or modify rents; repair, maintain, and improve the Property; employ

contractors, subcontractors, and workmen in and about the Property; obtain and evict tenants; in its own name, sue for or otherwise collect or reserve any and all rents, issues and profits, including those past due and unpaid; employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of Mortgagee's rights hereunder and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which Mortgagee may deem necessary and appropriate in and about the Property for the protection thereof and of Mortgagee's rights hereunder or under the Note, and any and all amounts expended by Mortgagee in connection with the foregoing shall constitute additional Indebtedness secured hereby. Mortgagee shall apply any monies collected by Mortgagee, as aforesaid, less costs and expenses incurred, as aforesaid, upon any Indebtedness secured hereby In such order and manner as Mortgagee may determine. The entering upon and taking possession of the Property; the collection of rents, issues, and profits; the exercise of any rights hereinabove specified; and the application of collections, as aforesaid, shall not cure, waive, modify or affect any default hereunder or under the Note.

6.9 Tenants. All tenants or occupants of any part of the Property (including without limitation, all persons claiming any interest as lessor or lessee under any Leases) are hereby authorized to recognize the claims and demands of Mortgagee without investigation as to the reason for any action taken by Mortgagee or the validity or the amount of indebtedness owing to or the existence of any default hereunder or under the Note, or the application to be made by Mortgagee, of any amounts to be paid to Mortgagee. Mortgagee's sole signature shall be sufficient for the exercise of any right under this Mortgage and Mortgagee's sole receipt given for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rental collected under this Mortgage shall be made to the exclusive order of Mortgagee.

6.10 Performance of Obligations. Mortgagor shall perform all of its obligations as lessor or lessee under any of the Leases, and shall give prompt notice to Mortgagee of any notice of default by Mortgagor under any of the Leases, together with a complete copy of any such notice. Mortgagor shall enforce the performance and observance of each and every covenant of the lessor's or lessees' under the Leases.

6.11 Operation of Property. Mortgagee shall not be obligated to perform or discharge any obligation, duty or liability under any of the Leases, nor shall this Mortgage operate to place upon Mortgagee responsibility for the control, operation, management, or repair of the Property or the carrying out of any of the terms and conditions of any of the Leases; nor shall this Mortgage operate to make Mortgagee liable for any waste committed on the Property by the lessor or lessee under any of the Leases or committed by any other party, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, resulting in loss, injury or death to any tenant, licensee, employee, invitee or stranger.

6.12 Indemnification with respect to Leases. Mortgagor shall, and does hereby agree to, indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under any of the Leases or under or by reason of this Mortgage and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any of the Leases, except for liability, loss or damage and all claims and demands arising from actions taken by Mortgagee or its authorized representatives hereunder. Should Mortgagee incur any such liability, loss or damage under any of the Leases or under or by reason of this Mortgage, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorney's fees, shall be secured hereby, Mortgagor shall reimburse Mortgagee therefor immediately upon demand, and upon Mortgagor's failure to do so, Mortgagee may declare all such sums immediately due and payable.

6.13 Advance Rent. Mortgagor has not and shall not accept rent in advance under any of the Leases except only monthly rents for current months which may be paid in advance.

ARTICLE 7

DEFENSE

7.1 Defense. If Mortgagor shall keep, observe and perform all of the covenants and conditions of this Mortgage on its part to be kept and performed and shall pay and perform, or cause to be paid and performed, all of the Indebtedness whether now outstanding or hereafter arising, including alt extensions and renewals thereof, and all of the other Indebtedness, then Mortgagee shall release this Mortgage upon the request and at the expense of Mortgagor, otherwise this Mortgage shall remain in full force and effect.

[Signature on following page]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first above written.

MORTGAGOR:

PRIDE ONE CHERRY TREE, LLC,
an Ohio limited liability company

By: IPN-PRIDE INVESTMENT HOLDINGS, LLC,
an Ohio limited liability company

Its: Manager

By: /s/ Joseph Moffa

Name: Joseph Moffa
Title: Manager

IPN-PRIDE INVESTMENT HOLDINGS, LLC,
an Ohio limited liability company

By: /s/ Joseph Moffa

Name: Joseph Moffa
Title: Manager

STATE OF Ohio §
COUNTY OF Medina §

The foregoing instrument was acknowledged before me this 2 day of June, by Joseph Moffa, the Manager of IPN-PRIDE INVESTMENT HOLDINGS, LLC, an Ohio limited liability company, on its behalf.

Date: June 2, 2021

/s/ Katie Zimmerman

Notary Public

Print Name: Katie Zimmerman

My Commission Expires: 4/25/23

[Official Seal]

[Signature Page to Mortgage – Assignment of Leases and Rents and Fixture Filing]

STATE OF Ohio §
COUNTY OF Medina §

The foregoing instrument was acknowledged before me this 2 day of June, by Joseph Moffa, the Manager of IPN-Pride Investment Holdings, LLC, an Ohio limited liability company, the Manager of Pride One Cherry Tree, LLC, an Ohio limited liability company, on its behalf.

Date: June 2, 2021

/s/ Katie Zimmerman

Notary Public

Print

Katie Zimmerman

My Commission Expires: 4/25/23

[Official Seal]

[Signature Page to Mortgage – Assignment of Leases and Rents and Fixture Filing]

EXHIBIT A

LEGAL DESCRIPTION

(HOTEL PROPERTY)

Land in the Township of East Bay, Grand Traverse County, MI, described as follows:

Unit Nos. 1 through 77, Cherry Tree Condominium, according to the Master Deed recorded in Liber 2006C, Page 00067, and Amendments thereto, First Amendment to Master Deed recorded in Instrument No. 2008C-00015 and designated as Grand Traverse County Condominium Subdivision Plan No. 317, together with rights in general common elements and limited common elements as set forth in above Master Deeds and as described, in ACT 59 of Public Acts of 1978, and amendments thereto.

Excepting:

An undivided 1/4 interest in Unit 2 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 2 Cherry Tree Condominium being Fractional ID "C and "G",
An undivided 1/4 interest in Unit 3 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 3 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 4 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 9 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 23 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 24 Cherry Tree Condominium being Fractional ID "D" and "H",
An undivided 1/4 interest in Unit 37 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 45 Cherry Tree Condominium being Fractional ID "A" and "E",
An undivided 1/4 interest in Unit 72 Cherry Tree Condominium being Fractional ID "B" and "F".

A-1

HOTEL MANAGEMENT AGREEMENT

between

PHR CHERRY OPCO SUB, LLC
as Owner

and

PHR CHERRY TREE HOTEL MANAGER, LLC
as Manager

FOR

Cherry Tree Inn and Suites
2345 N. US 31 North, Grand Traverse City, Michigan

HOTEL MANAGEMENT AGREEMENT

This Hotel Management Agreement (the "**Agreement**") made as of this 3rd day of June 2021 (the "**Effective Date**") between PHR CHERRY OPCO SUB, LLC, a Michigan limited liability company (the "**Owner**") and PHR CHERRY TREE HOTEL MANAGER, LLC, a Michigan limited liability company, as Manager ("**Manager**"),

RECITALS:

WHEREAS, PHR CHERRY PROP CO, LLC, a Michigan limited liability company ("**Fee Owner**") is the lessor of the Premises (as defined below), and (ii) all Building and Appurtenances (as defined below), including, without limitation an existing 76 room hotel which is known as Cherry Tree Inn and Suites located at 2345 N. US 31 North, Grand Traverse City, Michigan (as more particularly defined in the Article I below, the "**Hotel**").

WHEREAS, Owner holds a leasehold interest in the Hotel pursuant to the Lease (as defined below).

WHEREAS, Manager is experienced in the management and operation of hotels.

WHEREAS, Owner desires to retain Manager to manage and operate the Hotel. Manager is willing to perform such services for the account of Owner on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS, TERMS AND REFERENCES

1.1 Definitions. In this Agreement and any Exhibits, the following terms shall have the following meanings:

"**AAA**" shall have the meaning set forth in Article 30.

"**Accounting Period**" shall mean each calendar month (whether of 28, 29, 30 or 31 days) during each Fiscal Year.

"**Affiliate**" shall mean any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another person or entity. The term "**control**" (and correlative terms) shall mean the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a person or entity. Without limiting the foregoing, an "**Affiliate**" also includes any partner or a partnership of any party to this Agreement, any member or membership parties thereto and any corporation, partnership, individual or trust related to or controlling or controlled by such partnership, individual or trust related to or controlling or controlled by such partnership party or its partners or such membership party or its members. A natural person is related to another natural person if he or she is a spouse, parent, or lineal descendant of the other person.

Management Agreement - Page 1

"**Allocated Services**" shall mean certain support services that Manager obtains from a third party and provides on a central or regional basis to the hotels that it manages because such support services can be provided on a more efficient, effective and economical basis to each individual Manager managed hotel if the expenses of such support services are shared by other Manager managed hotels. Such support services include services in the areas of sales and marketing, purchasing, food and beverage, human resources, insurance, technology, training and payroll (each such service, an "**Allocated Service**"; collectively, the "**Allocated Services**"). Owner and Manager agree that Manager shall provide Allocated Services to the Hotel and that the Hotel's portion of the cost thereof shall constitute a Gross Operating Expense so long as (i) the costs of the Allocated Services are allocated in a commercially reasonable fashion on a proportionate basis among the Hotel and the other Manager managed hotels benefiting therefrom; and (ii) the Allocated Services shall not include services that do not benefit the Hotel. The parties agree that Manager (or its Affiliates) and the Hotel shall be returned a proportionate share of any rebates received by Manager with respect to any of the Allocated Services on a proportionate basis as compared to other hotels managed by Manager or its Affiliates.

"**Annual Operating Budget**" shall mean an annual operating projection for the Hotel prepared and submitted by Manager to Owner and approved by Owner for each Fiscal Year pursuant to Section 4.4(a).

"**Annual Plan**" shall mean an annual business plan for the operation of the Hotel prepared by the Manager and approved by the Owner, which shall include the Annual Operating Budget, the Approved Capital Budget and any other material included therein by Manager as provided in Section 4.4.

"**Approved Capital Budget**" shall have the meaning set forth in Section 4.4(b).

"**Base Fee**" shall have the meaning set forth in Article 11.

"**Building and Appurtenances**" shall mean (i) the hotel building located on the Premises, and (ii) landscaping and other related facilities, together with all installations located at, or used in connection with the operation of the building for hotel purposes including, without limitation, any swimming pools, health club and recreational facilities, walkways, parking facilities, heating, lighting, sanitation equipment, air conditioning, laundry facilities, refrigeration, built-in kitchen equipment, and elevators.

"**Capital Budget**" shall mean Manager's proposed estimate of FF&E and Capital Improvements submitted to Owner each Fiscal Year pursuant to Section 4.4.

"**Capital Improvements**" shall have the meaning set forth in Section 8.2 hereof.

Management Agreement - Page 2

"**Centralized Services**" means those services described on Schedule IV attached hereto, which reflects those Centralized Services provided by the Manager and which may be amended from time to time in writing by the Owner and Manager or as set forth in an approved Annual Plan.

"**Commencement Date**" shall mean the date hereof.

"**Competitive Set**" shall mean the properties listed on Exhibit C attached hereto and any revisions to such list agreed upon by Owner and Manager from time to time.

"**CPI**" shall mean the Consumer Price Index for All Urban Consumers, United States City Average, All Items (1982-84=100), issued by the Bureau of Labor Statistics of the United States Department of Labor.

"**Default Rate**" shall mean the lesser of (i) the Prime Rate plus four percent (4%) per annum or (ii) the highest lawful rate permitted by applicable Legal Requirements from time to time.

"**Earnings Before Interest, Taxes, Depreciation and Amortization**" or "**EBITDA**" shall Total Operating Revenues less Gross Operating Expenses, excluding taxes of any kind (including betterments and assessments), interest, depreciation, amortization, reserves, insurance, any debt service payments and costs of the Hotel (including without limitation, debt service, fees to lenders and servicers, penalties, late fees, amortization any equipment lease payments and costs) and property, casualty and hazard insurance.

"**Effective Date**" shall mean the date of this Agreement as set forth on page 1 hereof.

"**ERISA**" shall have the meaning set forth in Section 4.2(a).

"**Event of Default**" shall mean any of the events described in Article 16, provided that any condition contained therein for the giving of notice or the lapse of time, or both, has been satisfied.

"**Executive Personnel**" shall mean the general manager, director of sales and the controller of the Hotel.

"**Fee Owner**" shall have the meaning set forth in the introductory section of this Agreement.

"**Fiscal Year**" shall mean the fiscal year that ends on the last day of each calendar year. The first Fiscal Year shall be the period commencing on the Commencement Date and ending on December 31st of the same calendar year in which the Commencement Date occurs. The last Fiscal Year shall be the period commencing on January 1st of the same calendar year in which the last day of the Term of this Agreement occurs and ending on such last day of the Term. The words "full Fiscal Year" shall mean any Fiscal Year containing not fewer than 365 days. A partial Fiscal Year after the end of the last full Fiscal Year and ending with the expiration or earlier termination of the Term shall constitute a separate Fiscal Year.

Management Agreement - Page 3

"**Furniture, Fixtures and Equipment**" or "**FF&E**" shall mean all furniture, furnishings, wall coverings, fixtures, carpeting, rugs, fine arts, paintings, statuary, decorations, and hotel equipment and systems (including the costs associated with the purchase, installation and delivery thereof) located at, or used in connection with, the operation of the Building and Appurtenances as a hotel, including without limitation, major equipment and systems required for the operation of kitchens, bars, laundry and dry cleaning facilities, office equipment, dining room wagons, major material handling equipment, major cleaning and engineering equipment, telephone systems, computerized accounting and vehicles (including the costs associated with the purchase, installation and delivery thereof) together with all replacements therefor and additions thereto, but in all events excluding Operating Equipment and Supplies.

"**GAAP**" shall have the meaning set forth in Section 4.2.

"**Gross Operating Expenses**" shall have the meaning contained on Schedule II attached hereto. .

"**Hotel**" shall mean (a) the Building and Appurtenances and the Premises owned by Owner and (b) all FF&E, all Operating Equipment and Supplies, and all Inventories owned by Owner located at the address set forth on Schedule I.

"**hotel**" shall mean any hotel (other than the Hotel), inn, motor inn, motor hotel, motel, suite hotel, conference center, meeting center or any other facility providing either or both of short-term lodging and meeting arrangements.

"**Hotel Employees**" shall have the meaning set forth in Section 4.2.

"Inventories" shall mean inventories of supplies, in accordance with the Uniform System of Accounts, such as soap, toilet paper, stationery, writing pens, food and beverage inventories, paper products, menus, expendable office and kitchen supplies, fuel, supplies and items similar to any of the foregoing.

"Lease" means that certain Hotel Lease entered into by and between Owner, as tenant, and Fee Owner, as landlord, on or about the date hereof, as the same may be amended from time to time.

"Legal Proceedings" shall mean all complaints, counterclaims or cross-claims filed in a court of competent jurisdiction, any notice of any claim of violation of any legal requirement by any governmental agency or authority, or any summons or other legal process, in each instance by or against the Hotel or by or against Owner, or Manager in connection with the Hotel.

"Legal Requirements" shall mean (a) all laws, ordinances, statutes, regulations and orders relating to the Hotel and the Premises now or hereafter in effect, including but not limited to, environmental laws and (b) all terms, conditions, requirements and provisions of (i) all Permits; (ii) all leases; and (iii) all liens, restrictive covenants and encumbrances affecting the Hotel or the Premises or any part thereof.

Management Agreement - Page 4

"Liabilities" shall have the meaning set forth in Section 24.1.

"License Agreement" shall mean the franchise or license agreement from time to time entered into by Owner with respect to the branding and operation of the Hotel. For the purposes of this definition, the following terms used in said section shall have the following meaning:

"Licensor" shall mean the franchisor or licensor under the franchise or license agreement from time to time entered into by Owner with respect to the branding and operation of the Hotel.

"Licensee" shall mean Owner; and the **"Manual"** shall mean the Licensor's operating manual and other manuals for Licensor described in its standard license agreement.

"Major Capital Expenditures" shall have the meaning set forth in Section 4.4.

"Major Renovations" shall mean a contemporaneously made set or series of alterations, additions and/or improvements to the Hotel with a total cost in excess of \$100,000 (or a lesser amount in the event a project with a total cost less than \$100,000 requires material design and purchasing and installation services related thereto and/or results in a material alteration in the design of the Hotel), but shall not include any Repairs or Maintenance with respect to Capital Improvements or FF&E.

"Management Fee" shall mean the Base Fee and other fees payable or due hereunder, all as set forth in Article 11 hereof and Schedule I attached hereto.

"Manager" shall have the meaning set forth in the introductory section of this Agreement.

"Manager's Liability Cap" shall have the meaning set forth in Article 33.

"MEPPA" shall have the meaning set forth in Section 4.2(a).

"Minimum Cost" shall have the meaning set forth in Section 15.1.

"Mortgage" shall mean, collectively, each of the documents evidencing or securing current or future indebtedness on the Hotel in favor of a third party lender or financial institution or any successor thereto or replacement thereof (the **"Lender"**).

"OFAC" shall have the meaning set forth in Section 26.18.

"Open for Business" shall mean the period of time during which all or substantially all of the Hotel is open for business to the general public.

"**Operating Account**" shall mean a special account or accounts, bearing the name of the Hotel, established by Owner in a federally insured bank or trust company selected by Owner.

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"**Operating Equipment and Supplies**" shall mean supply items which constitute "Operating Equipment and Supplies" under the Uniform System of Accounts, all miscellaneous serving equipment, linen, towels, uniforms, silver, glassware, china and similar items.

"**Operating Standards**" shall mean the operation of the Hotel in a manner consistent with (i) the requirements under the License Agreement; (ii) the condition of the Hotel as of the Commencement Date (or, following completion of a Renovation, the condition of the Hotel as of the completion of the Renovation), normal wear and tear excepted; (iii) the condition and level of the operation of hotels of comparable class and standing to the Hotel in its market area; (iv) then current market conditions regarding rental rates and lease terms and conditions with respect to Hotels of comparable class and standing to the Hotel (including but not limited to the Competitive Set); (v) the requirements under the Lease; and (vi) then current business and management practices (including those related to compliance with Legal Requirements) applicable to the management, operation, leasing, maintenance and repair of a hotel comparable in size, character and location to the Hotel.

"**Owner**" shall have the meaning set forth in the introductory section of this Agreement.

"**Owner's Annual Plan Objections**" shall have the meaning set forth in Section 4.4.

"**Performance Standard**" shall have the meaning set forth in Section 18.2.

"**Permits**" shall mean all governmental or quasi-governmental licenses and permits, including but not limited to any certificate of occupancy, business licenses and liquor licenses.

"**Permitted Investments**" shall mean (subject to modification, addition or deletion from time to time at the option of Owner by written request to Manager) all of which shall be in the name of Owner:

(a) interest-bearing deposit accounts (which may be represented by certificates of deposit, time deposit open account agreements or other deposit instruments) in commercial banks having a combined capital and surplus of not less than \$50,000,000; or

(b) all other investments approved by Owner.

"**Premises**" shall mean the land on which the Hotel is located, which land is described in Exhibit A attached hereto.

"**Prime Rate**" shall mean the rate per annum announced, designated or published from time to time by JP Morgan Chase Bank N.A. as its "prime", "reference" or "base" rate of interest for commercial loans.

"**Privileged Information**" shall have the meaning set forth in Section 26.19.

"**Prohibited Persons**" shall have the meaning set forth in Section 26.18.

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"**Proposed Capital Expenditures Budget**" shall have the meaning set forth in Section 4.4.

"**Proposed FF&E Budget**" shall have the meaning set forth in Section 4.4.

"**Proposed Operating Budget**" shall have the meaning set forth in Section 4.4.

"**Reimbursable Expenses**" shall mean all travel, lodging, entertainment, telephone, facsimile, postage, courier, delivery, employee training and other expenses incurred by Manager in accordance with the standard policies for expenses incurred by Manager on its own behalf and which are directly related to its performance of this Agreement, but in no event will Reimbursable Expenses include or duplicate expenses for Manager's overhead, Allocated Services or Centralized Services.

"**Renovation**" shall mean a renovation of any portion of the Hotel during the Term, pursuant to a plan proposed by Manager and approved by Owner to, among other things, bring the Hotel to a physical condition that satisfies the standards under the License Agreement and to operate in a manner consistent with the assumptions for the then-current Annual Operating Budget and then-current Annual Plan. A Renovation shall be carried out at the expense of Owner pursuant to plans and specifications and a schedule prepared by Manager and approved by Owner and, to the extent required under the License Agreement, by Licensor.

"**Repairs and Maintenance**" shall have the meaning as defined in Section 8.1.

"**Reserve**" shall mean an account maintained as a Permitted Investment for Reserve for replacement of FF&E and/or Capital Improvements, as described in Section 7.1 and funded as provided in Section 7.2.

"**Schedule I**" shall mean Schedule I attached to and made a part of this Agreement.

"**Schedule II**" shall mean Schedule II attached to and made a part of this Agreement.

"**Schedule III**" shall mean Schedule III attached to and made a part of this Agreement.

"**Schedule IV**" shall mean Schedule IV attached to and made a part of this Agreement.

"**State**" shall mean the State in which the Hotel is located or other as designated.

"**Term**" shall mean the term of this Agreement, which shall be an initial ten (10) year term commencing on the Commencement Date and expiring on the tenth (10th) anniversary of the Commencement Date, as such Term may be extended or shortened as expressly set forth in this Agreement or as otherwise agreed to by Owner and Manager.

"**Third Party Purchaser**" shall have the meaning set forth in Section 18.1.

"**Total Operating Revenues**" has the meaning set forth on Schedule III attached hereto.

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"**Unavoidable Interruptions**" shall mean interruptions in the operation of or access to the Hotel or any of its essential services on account of an interruption in any one or more of the utility services described in Section 13.2, or on account of labor disputes, strikes, lockouts, fire or other casualty, war, terrorist actions, acts of God and other similar causes beyond the reasonable control of the party claiming an unavoidable interruption, but never financial inability. Other than obligations accruing prior to the occurrence of an event of Unavoidable Interruption or obligations that, if not performed, would cause a material adverse effect on the Hotel or its operations (for instance, the requirement to maintain the Permits or insurance obligations hereunder), the obligations of the party hereunder shall be suspended during the period of an Unavoidable Interruption.

"**Uniform System of Accounts**" shall mean the Uniform System of Accounts for the Lodging Industry, 11th Revised Edition, 2014, as published by the Hotel Association of New York City, Inc. or any later edition thereof.

"**Working Capital**" shall mean and refer to the funds which are reasonably necessary for the day-to-day operation of the Hotel's business, including, without limitation, amounts sufficient for the maintenance of petty cash funds, operating bank accounts, receivables, payrolls, prepaid expenses, advance deposits, funds required to maintain inventories, and amounts due to/or from Manager and/or Owner less accounts payable and accrued current liabilities.

1.2 **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all genders; the singular shall include the plural, and the plural shall include the singular. The titles of Articles, Sections and Subsections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections, Subsections, paragraphs, clauses, sub-clauses or exhibits shall refer to the corresponding Article, Section, Subsection, paragraph, clause or sub-clause of, or exhibit attached to, this Agreement, unless specific reference is made to the articles, sections or other subdivisions of, or exhibits to, another document or instrument.

1.3 **Exhibits.** All exhibits, schedules and other attachments attached hereto are by this reference made a part of this Agreement.

ARTICLE 2 MANAGEMENT OF HOTEL

Owner hereby engages and appoints Manager, pursuant to the terms of this Agreement, to operate and manage the Hotel, and Manager hereby agrees and contracts to plan, operate, repair and manage the Hotel pursuant to the terms of this Agreement.

Subject to the terms of this Agreement, Hotel operations shall be under the exclusive supervision of Manager, which, except as otherwise specifically provided in this Agreement, shall be responsible for the proper and efficient operation, maintenance and repair of the Hotel in accordance with the terms of this Agreement. Except as specifically set forth in this Agreement, Manager shall have discretion and control respecting matters relating to management and operation of the Hotel, including, without limitation, charges for rooms and commercial space, credit policies, food and beverage services, other Hotel services, employment policies, granting of concessions or leasing of shops and agencies within the Hotel, procurement of inventories, supplies and services, promotion and publicity and, in general, all activities necessary for operation of the Hotel.

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Manager shall devote its knowledge, experience and efforts to operate and manage the Hotel pursuant to this Agreement in a businesslike manner in accordance with the Operating Standards. Manager shall make available to Owner the full benefit of the judgment, experience and advice of the members of Manager's organization and staff with respect to the policies pursued by Owner in operating, maintaining, and servicing the Hotel.

ARTICLE 3 TERM

3.1 **Term.** The agreement shall be in effect for the initial Term. If this Agreement has not been otherwise terminated in accordance with the terms of this Agreement, upon the expiration of the initial Term, the initial Term shall be automatically be extended by four (4) terms of one (1) year each, unless either Owner and Manager send a termination notice at least thirty (30) days prior to the then expiration of the Term to cancel this Agreement effective as of the then next expiration of the Terms (as it may be extended). Notwithstanding the foregoing, the Agreement may be terminated prior to the scheduled expiration of the Term or any extension thereof (i) upon the sale of the Hotel to a bona fide Third Party Purchaser, subject to and as allowed and provided in Article 18 hereof; and (ii) as otherwise provided in Articles 15, 17 and 18.

3.2 **Surrender.** On the expiration or sooner termination of the Term, Manager shall quit and surrender the Premises to Owner in the condition required pursuant to this Agreement and take such other actions as contemplated by Article 20 hereof.

ARTICLE 4 USE AND OPERATION OF THE HOTEL

4.1 **Operation.** Manager shall be the sole and exclusive manager of the Hotel during the Term and shall operate the Hotel in accordance with the Operating Standards and the provisions of this Agreement. Manager shall act in good faith with respect to the proper protection of and accounting for Owner's assets and shall deal at arm's length with Owner and all third parties.

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4.2 **Employment.** (a) Subject to the terms of this Agreement, Manager shall select, employ, promote, transfer, compensate, terminate where appropriate, supervise, direct, train, and assign the duties of the Executive Personnel and, through the Executive Personnel, a sufficient number of personnel whom Manager reasonably determines to be necessary or appropriate for the proper, adequate and safe operation and management of the Hotel (collectively, the "**Hotel Employees**"). All such employees of the Hotel shall be employees of Manager or Manager's Affiliate. In addition, Manager may, from time to time, assign one or more of its employees to the staff of the Hotel on a full-time, part-time or temporary basis. Notwithstanding the provisions of this Section 4.2 or any other provision of this Agreement, all costs, expenses and liabilities relating to Hotel Employees shall be expenses of operating the Hotel and the responsibility of Manager for acts or omissions of Hotel Employees shall not extend beyond responsibility for the gross negligence or willful misconduct of, or the willful violation of Legal Requirements by the Executive Personnel. Subject to Section 4.6 below, Manager will negotiate with any union lawfully entitled to represent such employees and may execute collective bargaining agreements or labor contracts resulting therefrom that have been approved by Owner. Manager shall fully comply with all Legal Requirements having to do with worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects. The cost of all labor, employees and employment arrangements and any benefits and taxes related thereto shall be charged as Gross Operating Expenses of the Hotel and shall be accrued in accordance with generally accepted accounting principles ("**GAAP**") and shall be promptly paid by Owner in accordance with the terms of this Agreement. The costs provided for in the immediately preceding sentence shall include, by way of example and not limitation, all reasonable costs and expenses (including, without limitation, all employment related expenses incurred by Manager with respect to the Hotel Employees), such as severance pay, unemployment compensation and health insurance and related costs (i.e., in order to comply with COBRA-type regulations) as a result of the termination of employees and which shall have been paid or accrued in accordance with GAAP. Manager shall use commercially reasonable efforts and exercise reasonable care to select qualified, competent, and trustworthy employees. The Hotel's general cashier and all employees having check signing authority shall be adequately bonded or insured to the reasonable satisfaction of Owner (or as provided herein) and the cost of such bonds or insurance shall be an expense of the Hotel. To the extent possible and reasonably available, Manager shall use local labor to fill non-Executive Personnel positions in the operation of the Hotel. Owner may at any time consult or communicate with Manager regarding any of the Hotel Employees, but will not interfere in the day-to-day activities of Hotel Employees. The Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex or sexual orientation, and all employment advertising shall indicate that Manager and Owner are each an Equal Opportunity Employer as that term is defined under Legal Requirements.

Notwithstanding anything to the contrary contained in this Agreement, the following subparagraphs (b) and (c) shall apply to any liability that may, from time to time, arise out of the Employee Retirement Income Security Act of 1974 ("**ERISA**") and the Multi-employer Pension Plan Amendments Acts of 1980 ("**MEPPA**"), respectively, as from time to time amended.

(b) **Employee Benefits:** Any Hotel Employees who are not then represented by a collective bargaining representative shall be entitled to participate in the incentive programs, profit sharing and/or other employee retirement, disability, health, welfare or other benefit plan or plans then made available by Manager to similarly situated employees of other hotels managed by Manager, in accordance with their respective terms. Manager will have the right to charge the Hotel with its allocable share of the cost of any such plan or plans and any contributions to be made thereunder provided that such charges and contributions shall be determined by Manager in good faith on a uniform basis with respect to charges and contributions imposed for the same or similar plans at other hotels then managed by Manager, subject to Legal Requirements. Manager's rights under this Subsection (b) shall be subject to the condition that Manager shall not put into effect any amendment to any existing plan, or adopt any additional plan, which is not imposed upon all other similarly situated hotels managed by Manager.

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Upon the expiration or termination of this Agreement, the sale of the Hotel or other similar event, Manager shall cooperate with the Owner with respect to disposition of such plan or plans (or plan assets) in a mutually satisfactory manner, all in compliance with then applicable Legal Requirements.

(c) **Collective Bargaining or Other Multi-employer Plans:** Manager and Owner agree that with respect to any withdrawal liability arising under any collective bargaining agreement or other "multi-employer plan" (as defined in Section 3(37) of ERISA) in which the Hotel Employees become participants, the obligations of the parties shall be determined as follows:

(1) Withdrawal liability arising with respect to Hotel Employees shall be the responsibility of Owner, and Owner shall either pay the amount of such withdrawal liability directly to such plan or reimburse Manager for withdrawal liability

payments made to such plan by Manager with respect to Hotel Employees (including withdrawal liability arising after the sale or other termination of this Agreement, provided that such liability arises as a result of such sale, disposition, termination or other similar event). To the extent permitted under then applicable laws, regulations and agreements, Manager shall cooperate with Owner in structuring transactions and transferring actual or contingent withdrawal liability to a successor in ownership or purchaser of the Hotel in accordance with "relief" provisions of ERISA, such as ERISA Section 4204 or then applicable statutory or regulatory provisions of a similar nature.

(2) For purpose of this subparagraph (c), the term "withdrawal liability" shall mean the actual amount assessed by and payable to a multi-employer pension fund upon a complete or partial withdrawal of the Hotel or Hotel Employees from such fund. Manager shall cooperate with Owner in challenging a plan's assessment of such liability, provided that all costs of litigation, arbitration or other procedures shall be paid by Owner (including any bonds that must be posted). If Manager or its Affiliates have employees at other locations who participate in the same multi-employer plan as Hotel Employees, Owner shall be charged with and be responsible only for multi-employer plan withdrawal liability arising solely with respect to the participation of Hotel Employees in such plan.

4.3 Legal Proceedings. Legal Proceedings of a "non-extraordinary nature" (hereafter defined), may be instituted by Manager, in accordance with guidelines and policies determined from time to time by Manager and Owner, in the name of Manager or the Hotel or Owner and by counsel designated by Manager pursuant to such guidelines and policies. Legal Proceedings of an "extraordinary nature" (hereafter defined) shall require Owner's prior approval of the proceedings and counsel approved by Owner. Manager shall furnish Owner with quarterly status reports with respect to all Legal Proceedings of an extraordinary nature. In addition, Manager shall have the right to defend, through counsel designated by Manager, Legal Proceedings of a non-extraordinary nature against Owner or Manager resulting from the operation of the Hotel. The defense of Legal Proceedings against the Hotel of an extraordinary nature (including, without limitation, any aspect of any claims against Manager or Owner arising out of the operation of the Hotel as to which the insurance company denies coverage) shall be coordinated with Owner, designated counsel shall be subject to Owner's reasonable approval and Manager shall furnish Owner with quarterly status reports with respect to such actions. All claims against Owner and/or Manager arising out of the management or operation of the Hotel which (i) are not covered by insurance shall be promptly communicated to Owner and (ii) are covered in whole or in part by insurance shall be promptly forwarded by Manager to the appropriate insurer (with a copy thereof to Owner in the case of claims against Owner). Legal Proceedings of a "non-extraordinary nature" shall be proceedings in which the monetary exposure is less than \$50,000 that are (i) initiated by Manager or Owner relating to the operation of the Hotel for matters such as collections, maintenance of licenses and permits, enforcement of contracts and proceedings against Hotel tenants; and/or (ii) defense of actions against the Owner or Manager resulting from the operation of the Hotel, for matters such as guest claims for loss of property or injury to persons and claims relating to employment or the application for employment at the Hotel. Legal Proceedings of an "extraordinary nature" shall mean all other Legal Proceedings. All costs, expenses, fees and liability associated with any Legal Proceedings shall be paid solely by Owner.

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4.4 Annual Plan. On or before the date that is forty-five (45) days following the Commencement Date, Manager shall submit to Owner a proposed Annual Plan in Manager's format for the remaining portion of the Fiscal Year in which the Commencement Date occurs and Owner and Manager shall cooperate to agree on the annual plan for the remainder of the Fiscal Year in which the Commencement Date occurs, which shall be the "Annual Plan" for such Fiscal Year. On or before December 1st of each year following the Commencement Date, Manager shall submit to Owner a proposed Annual Plan in Manager's format for the next Fiscal Year. On or before December 15th of each year following the Commencement Date, Owner either shall accept the proposed Annual Plan submitted to Owner by Manager or shall submit to Manager a detailed list of Owner's objections or questions to the proposed Annual Plan ("**Owner's Annual Plan Objections**"). Within fifteen (15) days after Manager's receipt of Owner's Annual Plan Objections, Owner and Manager shall meet and discuss Owner's Annual Plan Objections with the goal of agreeing upon an Annual Plan for the subject Fiscal Year (the "**Annual Plan**"). Owner, as part of Owner's Annual Plan Objections, shall have the right to object to the entire proposed Annual Plan or to any specific item or items contained in the proposed Annual Plan. In the event Owner objects to the proposed Annual Plan or any specific item or items of expense in the proposed Annual Plan and Owner and Manager are unable to reach agreement thereon as provided above prior to commencement of the Fiscal Year in question, pending such agreement, the proposed Annual Plan or the specific item or items of expense (not revenue) in question shall be suspended and replaced for such period that the Annual Plan or such item(s) are in question by an amount equal to the lesser of (i) that proposed by Manager for such Fiscal Year, or (ii) if an objection to the entire Annual Plan, the Actual Gross Operating Expenses for the immediately preceding Fiscal Year subject to an adjustment equal to the percentage increase in the CPI over the last twelve (12) month period immediately preceding the start of the Fiscal Year in question, or (iii) if an objection to a specific item or items of expense in the Annual Plan, such item or items of expense for the immediately preceding Fiscal

Year subject to an adjustment for each item equal to the percentage increase in the CPI over the twelve (12) month period immediately preceding the start of the Fiscal Year in question.

(a) The Annual Operating Budget shall be prepared in accordance with the Uniform System of Accounts. The proposed Annual Operating Budget shall incorporate Manager's good faith reasonable estimates of the items of revenue and expense contained therein and shall contain the proposed budget for operations for the succeeding Fiscal Year. When approved by Owner, the proposed Annual Operating Budget shall be the approved Annual Operating Budget. Any revisions, substitutions or additions to the Annual Operating Budget must be approved by the Owner in writing. The proposed Annual Plan shall include for the ensuing Fiscal Year, the following proposed budgets and programs:

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A. A proposed operating budget (the “**Proposed Operating Budget**”) on a monthly and yearly basis with detailed departmental schedules for each line item and the assumptions underlying the same, including, without limitation: (a) projected occupancy and average room rates by month broken down by room segment; (b) projected Total Operating Revenues; (c) proposed Hotel room rates and charges for other services; (d) projected Gross Operating Expenses; (e) projected EBITDA; (f) proposed staff scheduling and compensation (including, without limitation, any bonuses or other incentive compensation for Hotel Employees which may take the form of a “bonus pool” stating an aggregate amount to be distributed among the Hotel Employees as appropriate, rather than separately setting forth incentive and/or bonus compensation for each Hotel Employee); (g) a narrative comparison of budgeted revenue and expense levels to the previous Fiscal Year’s estimated and actual results, highlighting material changes for the upcoming Fiscal Year; (h) anticipated depreciation and amortization of fixed assets at the Hotel; (i) annual debt service with respect to the Hotel; (j) projected contributions by, and distributions to, Owner as the result of Hotel operations; (k) an estimate of the working capital funds required to be maintained, as of the end of each month; (l) a year-over-year comparison with comments regarding variance; (m) the cost of the Centralized Services, and (o) all other items reasonably requested by Owner in order to provide the projected cash flow for the Hotel during such upcoming Fiscal year.

B. A proposed budget (the “**Proposed Capital Expenditures Budget**” or “**Capital Budget**”) and when the Annual Plan is approved and agreed, the “**Approved Capital Budget**”) setting forth Manager’s estimate of the Capital Expenditures to be made respecting the Hotel for both of the following:

(a) major repairs, alterations, improvements, renewals and replacements (which repairs, alterations, improvements, renewals and replacements are not routine maintenance, repairs and alterations referred to in Section 6.1.2(b)) to the structural, mechanical, electrical, heating, ventilating, air conditioning, plumbing and vertical transportation elements of the Hotel building (“**Major Capital Expenditures**”); and

(b) non-routine repairs and maintenance to the Hotel building which are normally capitalized under GAAP, such as exterior and interior repainting, resurfacing building walls, floors, roofs and parking areas, and replacing folding walls and the like, but which are not Major Capital Expenditures.

C. A proposed budget (the “**Proposed FF&E Budget**”) setting forth Manager’s estimate of the FF&E expenditures to be made and the sources of funds for the replacements and renewals to the Hotel’s FF&E, including all information necessary to satisfy the reporting requirements in the License Agreement and the Mortgage relating to the FF&E Reserve.

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D. A market overview of local competitive properties of the Hotel including narrative descriptions of (a) the Hotel’s target market, (b) the Hotel’s relative position in such market, and (c) the proposed room rate structures and occupancy for the target market.

E. A marketing plan for the Hotel including narrative descriptions and Hotel allocable costs, of (a) Manager's national or regional or business segment marketing plans, (b) local Hotel marketing, and (c) intended sales initiatives.

F. A staffing plan describing the general staffing needs for the operation and management of the Hotel.

In preparing the Proposed Operating Budget, or otherwise from time to time upon the request of Owner, Manager shall use commercially reasonable efforts to investigate, consider and incorporate into the day-to-day operations of the Hotel certain efficiencies and economies of scale that may be achieved by outsourcing some or all services that may be currently provided "in-house".

In addition, Manager shall provide to Owner for Owner's review, a written schedule for the Hotel listing all executive and management employees to be employed "on-site" in the direct management of the Hotel including, but not limited to the positions of General Manager, Director of Sales, and Chief Engineer. These schedules shall include such employee's title or job description and the salary range including additional compensation or prerequisites such as lodging, meals, maintenance, moving expenses, bonus/incentive compensation and the like. In the event that any employee's services are shared with (or subsidized through a sharing arrangement with) another hotel, the employee shall be identified together with a description of his/her responsibilities and the amount and source of any subsidy, together with a breakdown of the relative time expended with respect to the Hotel and each other hotel. If Owner notifies Manager that Owner does not believe that some or all of the scheduled wages and salaries are reasonable and customary as required above, then Manager shall promptly provide to Owner a wage and salary survey that supports the scheduled wages and salaries. No proposed amendment including changes in salary or other compensation shall be effective unless the salary or other compensation as changed is reasonable and customary as required above.

4.5 **Contracts; Equipment Leases.**

Subject to the terms of this Section 4.5, Manager may contract for the purchase of goods and services for the Hotel with third parties that have other contractual relationships with Manager or its Affiliates, so long as the prices charged by such third parties are reasonably competitive. In addition:

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A. Contracts. Manager is authorized, without the prior written approval of Owner if not otherwise expressly contemplated by the Annual Plan, to enter in the name of Owner any contracts for or covering the Hotel (except for Equipment Leases and Space Leases as more fully described in subparagraph B below) with vendors of its choice; provided, however, if not otherwise expressly contemplated by the Annual Plan, Manager may not enter into any contract for or covering the Hotel without Owner's prior written approval if (a) the contract term is longer than one (1) year and is not terminable by Owner without penalty upon 30 days' prior written notice, or (b) the total expenditure by the Hotel pursuant to such contract shall be in excess \$25,000.

B. Equipment Leases. Manager is authorized, without the prior written approval of Owner if not otherwise a part of the Annual Plan, to enter in the name of Owner any equipment leases and Space Leases covering the Hotel with vendors of its choice; provided, however, if not otherwise expressly contemplated by the Annual Plan, Manager may not enter into any equipment lease without Owner's prior written consent if (a) the contract term is longer than one (1) year and is not terminable by Owner without penalty upon 30 days' prior written notice or (b) the total expenditures under such Equipment Lease or Space Lease exceed \$25,000.

4.6 **Labor Relations**. Manager shall have no right to enter into any collective bargaining agreement concerning any employees of the Hotel without the prior written approval of Owner, which may be granted or withheld in its reasonable discretion. Upon Owner's approval of any such agreement, Manager shall be responsible to perform such agreements. To the extent applicable, Manager: (a) represents that it is an equal opportunity employer as described in Section 202 of Executive Order 11246 dated September 24, 1965, as amended, and as such agrees to comply with the provisions of Paragraphs 1 through 7 of Section 202 of said Executive Order during the performance of this Agreement, (b) agrees to comply with the affirmative action requirements of Part 60.741 of Title 41, Code of Federal Regulations, with respect to handicapped workers during the performance of this Agreement, (c) agrees to comply with the affirmative action requirements of Part 60.250 of Title 41, Code of Federal Regulations, with respect to Disabled Veterans and Veterans

of the Vietnam Era during the performance of this Agreement, and (d) shall submit to Owner in the form approved by the Director of the Office of Federal Contract Compliance, U.S. Department of Labor, a certification that Manager does not and will not maintain any facilities that provide for their employees in a segregated manner, or permit their employees to perform their services at any location under its control, where segregated facilities are maintained, and that Manager will obtain a similar certification from its contractors.

4.7 **Liquor License.** Manager shall obtain and maintain throughout the Term any and all alcoholic beverage licenses either in its name or its designee and shall maintain the alcoholic beverage licenses in good standing and effect, free of all liens (and in compliance with the conditions imposed upon such alcoholic beverage licenses by any alcoholic beverage control commission or other governmental authority or agency and pursuant to any License Agreement.)

4.8 **Employee Discount.** To the extent Manager provides discounted rates to Manager's employees at other hotels managed by Manager or its Affiliates, pursuant to discount rate programs applicable to other hotels, Manager agrees to include this Hotel in such discounted rate programs (subject to availability and black-out periods determined by Owner and Manager during the Annual Plan process, or as otherwise approved by Manager or Owner as part of the revenue management of this Hotel) and to provide the same discounted rates to the Hotel Employees, to the extent allowed under the management and franchise agreements affecting such other hotels.

4.9 **Forms.** Manager shall prepare or cause to be prepared for execution by Owner all forms, reports and returns, if any, required to be filed by Owner under applicable law with respect to the operation of the Hotel; however, Manager shall not be obligated to prepare any of Owner's income tax returns. Without limitation, Manager shall timely prepare and deliver, as required by law, an Internal Revenue Service Tax Form 1099 with respect to payments made during a calendar year to third party contractors and professionals.

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4.10 **Notice of Violations.** Manager shall promptly notify Owner in writing of any written notice received from any regulatory or governmental body regarding an actual or perceived violation of any Legal Requirements.

4.11 **In-House Services.** Manager shall have the right to provide in-house services to the Hotel, including without limitation, legal counsel, the reasonable costs of which shall not exceed current market rates for similar services and shall be paid to Manager or its Affiliates as an

Gross Operating Expense of the Hotel; provided, however, that the cost of such in-house services shall not exceed the \$25,000 in the aggregate in any Fiscal Year without Owner's prior written approval. In the event Manager desires to enter into any transaction with an Affiliate or any person in which Manager or any of its Affiliates has any ownership, investment or management interest or responsibility which is on terms that are not arms-length, Manager shall (i) disclose to Owner the nature of such affiliation prior to engaging in any transaction in connection with the Hotel; and (ii) obtain the prior written approval of Owner (which consent shall not be unreasonably withheld, conditioned or delayed), regardless if such transaction was included in the approved Annual Plan.

4.12 **Centralized Services.** Subject to the terms and conditions of this Agreement, Manager shall furnish or cause its Affiliates to furnish to the Hotel, the Centralized Services. Subject to the approved Annual Plan and the terms and conditions of this Agreement, Owner shall pay to Manager the Hotel's allocable share of the Centralized Services actually incurred by Manager or its Affiliates (without profit, premium or mark-up or other element of compensation of any kind). Although the method of allocation of the Centralized Services among the Managed Hotels may change from time to time as agreed to by Owner and Manager, the current method of allocating the Centralized Services is set forth on Schedule IV. Additional Centralized Services may be added by amendment to Schedule IV from time to time only upon Owner's prior written approval (which shall not be unreasonably withheld, conditioned or delayed) with Manager's explanation of how the costs of such additional Centralized Services to be charged and allocated among the Manager managed hotels or if provided for in an approved Annual Plan. Except with respect to the Centralized Services, under no circumstances shall Manager charge for any general corporate overhead of Manager or Affiliates (except as otherwise provided or allowed in this Agreement). As part of the Proposed Annual Plan, in addition to the Centralized Services, Manager will set forth a list of those additional services (if any) that are furnished generally on a central or system-wide basis to Managed Hotels, together with Manager's proposal as to which of such additional services are appropriate for the Hotel.

4.13 **Lease.** Owner or Manager at Owner's request shall make any and all lease payments under the Lease as and when they become due, and shall comply with and perform any and all covenants contained in the Lease, in each instance before any event of default (as defined in the Lease) or other event occurs under the Lease, which would trigger the lessor's right to terminate the Lease.

**ARTICLE 5
RELATIONSHIP OF PARTIES**

Owner and Manager acknowledge and agree that this Agreement creates an agency relationship; provided, however, that (a) each Hotel Employee shall be the employee of Manager or Manager's Affiliate and not of Owner, (b) Manager's authority is subject to the terms and conditions of this Agreement, and (c) nothing in this Agreement shall constitute, or be construed to be, or create, a partnership, joint venture or lease or employment arrangement between Owner and Manager with respect to the Hotel or the operation thereof. Employees or agents of Manager are not by this Agreement or by any actions of Owner and/or Manager hereunder made employees of Owner, and are not entitled to the benefits provided by Owner or its Affiliates to its employees, including but not limited to, group insurance, leave and pension plan. This Agreement shall not be deemed at any time to be an interest in real estate or a lien or security interest of any nature against the Hotel, the Premises or any other land used in connection with the Hotel, or any equipment, fixtures, inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel paper, general intangibles, or other personal property now existing or that may hereafter be acquired or entered into with respect to the Hotel or the operation thereof.

**ARTICLE 6
ADVERTISING**

Subject to and in strict compliance with the provisions of the License Agreement, Manager shall arrange and contract for all advertising, which Manager may reasonably deem necessary, in accordance with Section 4.4, for the operation of the Hotel. So long as the License Agreement may be in effect, Manager generally shall advertise the Hotel under the name of the Hotel set forth on Schedule I or such other name as Owner may designate or approve.

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**ARTICLE 7
RESERVE FOR FF&E**

7.1. **Reserve for Replacement of FF&E.** The Reserve shall be funded pursuant to Section 7.2, and Manager shall use amounts in the Reserve to cover the cost of FF&E expenditures and Capital Improvements, as described in Section 4.4 in conjunction with the Approved Capital Budget. All FF&E, Capital Improvements and the Reserve shall be the property of Owner.

7.2. **Transfers to Reserve for FF&E.** Commencing on the Commencement Date and continuing thereafter during the remainder of the Term, Manager shall deposit monthly into the Reserve for FF&E an amount equal to the amounts required by Lender and/or by Licensor; provided that in no event will the amounts to be deposited monthly into the Reserve be less than an amount equal to such amounts required by the Owner's lender or the Franchisor.

7.3. **Annual Adjustment.** At the end of each Fiscal Year and following receipt by Manager of the annual accounting referred to in Article 10, an adjustment will be made to such annual account, if necessary and if available, so that the appropriate amount shall have been deposited in the Reserve.

7.4. **Maintenance of Reserve.** Checks or other documents of withdrawal shall be signed by representatives of Manager who shall be bonded or otherwise insured pursuant to insurance provisions of this Agreement. The proceeds from the sale of FF&E no longer needed for the operation of the Hotel shall be deposited in the Reserve, but not be credited against the obligation to deposit cash in such fund for the then current Fiscal Year. All interest earned or accrued on amounts invested from the Reserve shall be added to the Reserve (but shall not be credited against Owner's obligations to fund the Reserve), and shall not constitute Total Operating Revenues or be included therein.

7.5. **Accumulation of Reserve and Additional Cost of FF&E and Capital Improvements.** Owner and Manager acknowledge and agree that portions of the Reserve may, from time to time in accordance with the then-current Annual Plan, be used for more significant expenditures than could be reserved for in a single year. Accordingly, at the end of each Fiscal Year, any amounts remaining in the Reserve shall be carried forward to the next Fiscal Year, and shall be in addition to the amount to be reserved in the next Fiscal Year. In the event at any time there are insufficient funds in the Reserve for any Fiscal Year to pay the cost of FF&E in accordance with the Annual Operating Budget and the Approved Capital Budget, then Owner will, within thirty (30) days after request therefor by Manager shall provide the additional cash to the Manager.

7.6. **Final Remittance.** Upon expiration or termination of this Agreement, subject to the other terms and provisions of this Agreement, all remaining amounts in the Reserve shall be remitted forthwith to Owner.

ARTICLE 8 REPAIRS AND MAINTENANCE AND CAPITAL IMPROVEMENTS

8.1 **Repairs and Maintenance.** Subject to the terms hereof, Manager shall, from time to time, make such expenditures from Total Operating Revenues for repairs and maintenance including service contracts ("**Repairs and Maintenance**") as required by the Lender, the **License Agreement, the** Legal Requirements, the then current Annual Plan or as necessary to maintain the Hotel in good operating condition in compliance with the License Agreement and otherwise in the condition required by this Agreement, including but not limited to repairs and maintenance of HVAC, mechanical and electrical systems, exterior and interior repainting, resurfacing building walls and parking areas, waterproofing of exterior surfaces of floors, roofs, and replacement of plate glass, or the like. It is Owner's intent that the sums allocated for Repairs and Maintenance in accordance with the then current Annual Plan are to be fully expended during that Fiscal Year exclusively for the purposes identified in such Annual Plan. Except in the event of an emergency due to casualty, act of God or otherwise under circumstances in which it would be unreasonable to seek to obtain prior approval (and provided that Manager shall notify Owner of any such expenditure within a reasonable time given the nature and scope of the emergency), all expenditures for the foregoing shall be as provided in the Annual Operating Budget and the Approved Capital Budget. If any such Repairs or Maintenance shall be made necessary by any condition against the occurrence of which Owner has received the guaranty or warranty of the builder or the Hotel or of any supplier of labor or materials for the Hotel or of any supplier of labor or materials for the construction of the Hotel, then Manager may invoke said guarantees or warranties in Owner's or Manager's name and Owner shall cooperate in all reasonable respects with Manager in the enforcement thereof.

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8.2 **Capital Improvements.** Owner may, from time to time, at its sole expense, make such structural repairs, replacements, substitutions, alterations, additions or improvements (exclusive of FF&E) ("**Capital Improvements**") in or to the Hotel as Owner shall determine are necessary to comply with the Operating Standards. If Capital Improvements included in the definition of Building and Appurtenances shall be required at any time during the Term by the terms of any Mortgage, the License Agreement, to maintain the Hotel in good operating condition or by reason of any Legal Requirements, or because Manager and Owner jointly agree upon the desirability thereof, then in such event all such Capital Improvements shall be made with as little hindrance to the operation of the Hotel as reasonably possible. Notwithstanding the foregoing, as long as the Hotel can continue to operate without interruption, Owner shall have the right to contest the need for any such Capital Improvements required by any Legal Requirements and may postpone compliance therewith, if so permitted by law and if such postponement will not expose Manager to any civil or criminal liability. All recommendations by Manager of Capital Improvements shall be submitted in conjunction with the Capital Budget for the Fiscal Year described in Section 4.4(b). In the event that Owner elects to perform Major Renovations to the Hotel, the oversight of the performance of the Major Renovations shall be placed to bid, it being agreed that the Manager or its Affiliates may participate in any such bidding process.

8.3 **Service Contracts.** Manager, without requiring the consent of Owner, shall enter into any contract for cleaning, maintaining, repairing or servicing the Hotel or any of the constituent parts of the Hotel as Manager deems necessary for the operation of the Hotel, except as specifically provided in Section 4.4 or 4.5. Unless otherwise approved by Owner, all service contracts shall: (a) be in the name of Owner or Owner's nominee, (b) to the extent customary, include a provision for cancellation thereof by Owner or Manager upon not more than thirty (30) days written notice, and (c) shall require that all contractors provide evidence of such insurance as is customarily carried by other contractors involved in similar servicing arrangements.

8.4 **Liens.** Owner and Manager shall cooperate and use all commercially reasonable efforts to prevent any liens from being filed against the Hotel that arise from any maintenance, changes, repairs, alterations, improvements, renewals or replacements in or to the Hotel. If any such liens are filed, Manager shall, subject to the availability of funds therefor in the Operating Accounts or as otherwise supplied by Owner, obtain the release thereof prior to the institution of legal proceedings in connection therewith. The cost of obtaining such release shall be included in Gross Operating Expenses, unless the imposition of the lien results from a default by Owner or Manager, in which event the cost of obtaining such release shall be borne by such defaulting party.

8.5 **Notice of Unavoidable Interruptions.** In the event of any occurrence constituting an Unavoidable Interruption, Manager shall promptly notify Owner of such occurrence and shall keep Owner informed as to the extent and impact thereof on the Hotel.

ARTICLE 9

WORKING CAPITAL AND BANK ACCOUNTS; DISTRIBUTIONS

9.1 **Working Capital.** Owner shall provide initial Working Capital in the amount set forth on Schedule I in addition to the value of all Inventories. Owner shall at all times cause sufficient funds to be on hand in the Operating Accounts to assure the timely payment of all current liabilities of the Hotel, including but not limited to Gross Operating Expenses, all other costs and expenses incurred in connection with the Hotel pursuant to this Agreement and the performance by Manager of its obligations under this Agreement, all fees, charges and reimbursements payable to Manager hereunder and all amounts required hereunder to be transferred into the Reserve. In no event shall Owner permit the balance in the Operating Accounts to be less than an amount equal to the estimated monthly operating expenses of the Hotel as reflected in the then current Annual Operating Budget. From time to time, upon five (5) days prior written notice from Manager that such funds are required, Owner shall furnish to Manager funds that Manager deems reasonably necessary to assure that the Project shall have adequate working capital as herein provided. In the event Owner fails to supply required working capital in accordance with the provisions of this Section or if Manager otherwise deems such action to be necessary, Manager may use all or part of the funds in the Reserve to supplement the Operating Accounts in order to defray or pay the Hotel's operating costs and expenses, to the extent permitted by the Mortgage. Owner shall promptly reimburse the Reserve for all sums so used or transferred. All unexpended Working Capital, Inventories and Operating Equipment and Supplies purchased with Working Capital shall remain the property of Owner.

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9.2 **Operating Account.** All funds (exclusive of funds deposited in the Reserve and house banks at the Hotel) received by Manager in the operation of or otherwise relating to the Hotel, and funds for Working Capital provided by Owner or retained by Manager from Total Operating Revenues, shall be deposited in the Operating Account, provided that in connection with any cash management arrangements with the Lender, all Total Operating Revenues shall be deposited to the Operating Account upon being swept out of the accounts associated with such cash management arrangements. No funds shall be deposited into the Operating Account attributable to any other property. To the extent permitted by the Mortgage, amounts in the Operating Account may be temporarily withdrawn and invested by Manager in any Permitted Investments, having due regard for the timing of cash needs, but in no event shall such funds be co-mingled by Manager with any other funds. From the Operating Account, Manager shall pay all Gross Operating Expenses (other than the excess FF&E if funded by or through Owner) before any penalty or interest accrues thereon, however, taking into account sound cash management. All interest earned or accrued on amounts invested from the Operating Account shall be added to the Operating Account. All checks or other documents of withdrawal from the Operating Account shall be signed by representatives of Manager except as provided in Section 9.3 hereof.

9.3 **Maintenance of Operating Account.** Subject to Section 9.4, the Operating Account shall be opened and maintained at all times by Manager and checks and other documents of withdrawal shall be signed only by representatives of Manager who are covered by the insurance required herein. The Operating Account and any other bank accounts approved by Owner shall be in Owner's name (for example, “[Owner’s name] d/b/a/ [trade name of Hotel]”).

Manager shall not change the bank or open or close any bank account described in this Article 9 without Owner's prior written approval, which approval Owner shall not unreasonably withhold.

9.4 **Final Remittance.** Upon the expiration or termination of this Agreement, after payment of all Gross Operating Expenses for which bills were received to such date, Manager's Management Fee, Reimbursable Expenses, any Termination Fee and any other amounts then due and payable to Manager, all remaining amounts in (i) the Reserve, (ii) the Operating Account and (iii) the Permitted Investments, shall be transferred forthwith to Owner by Manager. Owner shall pay Manager any remaining Management Fee, any Reimbursable Expenses and any other amounts then due and payable to Manager and Owner shall pay, or cause to be paid, and shall hold Manager harmless from and against all Gross Operating Expenses or other costs or expenses received after Manager has so transferred all funds. The provisions hereof shall survive any termination of this Agreement.

9.5 **Distributions of Excess Cash.** The Owner agrees that no distributions of cash to Owner or any other party designated by Owner from the Operating Account except in accordance with the following:

Full payment of the following items in the following order has occurred:

- (A) all due and payable Management Fees, Centralized Services costs, Reimbursable Expenses and/or any other amounts due hereunder to Manager;
- (B) due and payable Gross Operating Expenses; and

(C) the deposit of any reserves required to be held hereunder, under the Mortgage or the License Agreement.

Upon payment of the same, Manager may distribute from the Operating Account to Owner all sums in the Operating Accounts in excess of the then working capital requirements of the Hotel determined in accordance with Section 9.1 of this Agreement.

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ARTICLE 10 BOOKS, RECORDS AND STATEMENTS

10.1 **Books and Records.** Manager (at the cost of Owner) shall keep full and adequate books of account and other records reflecting the results of operation of the Hotel in accordance with the Uniform System of Accounts and GAAP. The books of account and all other records relating to or reflecting the operation of the Hotel shall be kept either at the Hotel or at Manager's corporate offices and shall be available to Owner and its representatives and its auditors or accountants, at all reasonable times for examination, audit, inspection and transcription at Owner's sole cost and expense. All of such books and records pertaining to the Hotel including, without limitation, books of account, guest records and front office records at all times shall be the property of Owner. Upon any termination of this Agreement, all of such books and records forthwith shall be turned over to Owner at a location reasonably designated by Owner so as to insure the orderly continuance of the operation of the Hotel, but such books and records shall thereafter be available to Manager at all reasonable times for inspection, audit, examination and transcription for a period of two (2) years. Any books and records relating to Hotel Employees and payroll costs shall be the property of the Manager.

10.2 **Financial Reports.**

(a) Manager shall deliver to Owner within twenty (20) days following the close of each Accounting Period a monthly profit and loss statement reflecting a comparison of periodic and year-to-date actual revenues and expenses with the Annual Operating Budget as well as a periodic and year-to-date comparison of such actual revenues and expenses with those of the prior Fiscal Year.

(b) Further, Manager shall provide to Owner within twenty (20) days following the close of each Accounting Period a report prepared in accordance with the example set forth in Exhibit B attached hereto and made a part hereof.

(c) Further, within seventy-five (75) days after (i) the end of each Fiscal Year and (ii) the end of the Term of this Agreement, Manager shall deliver to Owner an annual accounting, showing the results of operation of the Hotel during the Fiscal Year and a computation of Total Operating Revenues, Gross Operating Expenses, and any other information necessary to make the computations required hereby or which may be requested by Owner, all for such Fiscal Year. The annual accounting for any Fiscal Year shall be controlling over the interim accountings for such Fiscal Year. Owner shall have the right to conduct an audit of the books.

(d) Further, Manager shall prepare and deliver any additional reports or information as Owner is required to provide under the License Agreement with respect to the operations of the Hotel.

10.3 **Audits by Owner.** Owner shall have the right to audit, conducted either by Owner's internal personnel or by a third party auditor retained by Owner at its expense, all items of expense and revenue under this Agreement including, but not limited to, Total Operating Revenues, Gross Operating Expenses, depreciation, the Management Fee and Reserve. Manager shall cooperate and assist with such audit. In the event that an audit reflects an underpayment to Owner or Manager or an overpayment to Manager or Owner, Manager shall correct same by a corrective payment to Owner or Manager, as appropriate, within ten (10) days following notice of the audit results to Manager, subject to Owner's and Manager's right to challenge the audit results in accordance with the provisions of Article 30 of this Agreement.

10.4 **Segregation of Accounts.** In any instance where Manager manages several properties for Owner, Manager shall segregate the income and expenses of each property so that Total Operating Revenues from each property will be applied only to the bills and charges from that property.

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**ARTICLE 11
MANAGER'S MANAGEMENT FEES; TIMING OF
PAYMENT TO MANAGER**

11.1 **Fees.** For each Fiscal Year or portion thereof, Manager shall receive, by a distribution made by Manager out of Total Operating Revenues at the end of each Accounting Period in respect of its management services hereunder, a fee (collectively, the "**Management Fee(s)**") calculated as follows:

- (a) the Base Fee set forth on Schedule I; plus
- (b) the fees and costs for Centralized Services provided herein.

The Management Fee generally shall be computed separately for each Fiscal Year and shall not be accumulated from Fiscal Year to Fiscal Year. Owner shall reimburse Manager for all Reimbursable Expenses incurred by it in connection with the performance of this Agreement. Any such amount shall be payable within thirty (30) days of billing, and upon request of Owner, Manager shall provide a statement showing in reasonable detail the nature and amount of such expenses, together with supporting documentation reasonably requested by Owner.

11.2 **Treatment of Proceeds of Business Interruption Insurance and Condemnation Awards.** In the event of a casualty or condemnation for temporary use resulting in the payment of business interruption insurance (with respect to such casualty) or a condemnation award (with respect to such condemnation for temporary use), the amount of such proceeds shall be considered a part of Total Operating Revenues for the purpose of computing Manager's Management Fee.

**ARTICLE 12
INSURANCE**

Manager shall procure and maintain (i) the Workers' Compensation and employer's liability insurance required under Section 12.2.1 and (ii) Commercial Crime insurance required under Section 12.2.2 and (iii) Employment Practices Liability insurance required under Section 12.2.4 and (iv) at Manager's sole cost and expense, the professional liability/errors and omissions insurance required under Section 12.2.7. Except to the extent caused by Manager's or its Affiliate's negligence or willful misconduct, Owner assumes all risks in connection with the adequacy of any insurance and waives any claim against Manager and its Affiliates for any liability, cost, or expense arising out of any uninsured or under-insured claim. All insurance for the Hotel that is obtained under Manager's insurance program will terminate effective upon Termination. Except as otherwise provided herein, the costs and expense of the insurance required by the Manager under this Article 12 shall be a Gross Operating Expense or otherwise paid by Owner.

12.1 **Property Insurance.** Insurance on the Hotel (including the improvements and contents) against loss or damage on an all risk coverage basis and all other risks covered by the usual standard extended coverage endorsements, insuring against loss or damage from windstorm, flood, hail and earthquake, all to the extent available on commercially reasonable terms, with deductible limits in an amount not to exceed \$25,000 per occurrence will be procured and maintained by the Owner, provided however with respect to windstorm and earthquake coverage, providing for a deductible reasonably satisfactory to Owner and Manager, all in an amount which shall be sufficient to avoid any coinsurance penalty clause application;

12.1.1 Insurance against loss or damage from explosion of boilers, pressure vessels, pressure pipes and sprinklers, to the extent applicable, installed in the Hotel; and

12.1.2 Business interruption insurance covering net income plus necessary continuing expenses for interruptions caused by any occurrence covered by the insurance referred to in Section 12.1.1 and 12.1.2, for a period of not less than twelve (12) months commencing at the time of loss.

12.2.1 Workers' Compensation and employer's liability insurance as may be required under Applicable Laws covering all of the Hotel Employees, with such deductible limits in an amount not to exceed \$25,000 and waiver of subrogation in favor of Owner will be procured and maintained by the Manager.

12.2.2 Fidelity bonds or insurance, subject to a deductible of not more than \$25,000 per loss, covering Manager's on site Hotel Employees in job classifications normally bonded in the hotel industry or as otherwise required by law will be procured and maintained by the Manager. Such coverage shall include a loss payable endorsement in favor of Owner and, to the extent available on commercially reasonable terms, shall include an extension for third party coverage with an endorsement confirming such extension that protects Owner's property, including, without limitation, monies and securities.

12.2.3 Commercial general public liability insurance and excess umbrella liability insurance, including, but not limited to, coverage against claims for personal injury, death or property damage occurring on, in, or about the Hotel, including, without limitation, innkeeper's liability, garage liability, garage keeper's legal liability, liquor liability and automobile insurance on vehicles operated in conjunction with the Hotel, as applicable, with single-limit coverage for personal and bodily injury and bodily damage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate and protection for third party claims will be procured and maintained by the Owner. Manager and any other party or interest requested by Manager shall be included as an additional named insured under the coverages required in this subsection.

12.2.4 Employment practices liability insurance with an extension for third party claims will be procured and maintained by the Manager.

12.2.5 Umbrella liability insurance coverage to a limit of not less than \$25,000,000 which shall provide excess coverage of all underlying insurances will be procured and maintained by the Owner.

12.2.6 Manager's or Manager's Affiliates' corporate office professional liability/errors and omissions insurance with a minimum amount of a \$2,000,000 limit of liability, covering financial loss arising from errors and omissions committed in the performance of Hotel Management services at the Hotel. Such insurance shall provide coverage for claims arising from professional services performed by Manager for wrongful acts which shall be defined as any actual or alleged negligent act, error or omission, misstatement or misleading statement or personal injury offense committed by the Manager or by any other person or entity acting on Manager's behalf in the performance of or failure to perform professional services. Personal injury offense also means any actual or alleged false arrest, detention or imprisonment, malicious prosecution, defamation including libel, slander and disparagement, publication or an utterance in violation of an individual's right to privacy and invasion of the right to private occupancy, including wrongful entry or eviction. The cost of this insurance shall be borne by Manager and is not an Operating Expense.

12.2.7 Cyber Liability Insurance, covering privacy liability, data breach, network security, network extortion, and business interruption, against loss from the failure by the Owner or the Hotel or by an independent contractor for which the Insured is legally responsible (including Manager) to properly handle, manage, store, destroy or otherwise control any : (i) personal information; (ii) third party corporate information in any format provided to the Insured, the Hotel or the Manager and specifically identified as confidential and protected under a nondisclosure agreement or similar contract; (iii) an unintentional violation of the Owner's, Manager's or the Hotel's privacy policy that results in the violation of any law or regulation with respect to privacy and personal information; (iv) a failure of computer network security. Such coverage will provide minimum limits of Five Million Dollars (\$5,000,000).

12.3 Cost and Expense. Except as otherwise provided herein, insurance premiums and any costs or expenses respecting the insurance described in this Article 12 shall be a Gross Operating Expense of the Hotel or otherwise paid by Owner. Premiums on policies for more than one year shall be charged pro rata over the period of the policies. Any reserves, losses, costs, damages or expenses which are uninsured, or fall within deductible limits or self-insured retentions, shall be treated as a cost of insurance and shall be a Gross Operating Expense.

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12.4 Coverage. All insurance described in this Article 12 to be obtained by Manager (at Owner's request) may be obtained by endorsement or equivalent means under Manager's blanket insurance policies, provided that such blanket policies substantially fulfill the requirements specified herein. Deductible limits and self-insured retentions shall be as provided in the blanket policies covering the hotels leased or managed by Manager. In addition, Manager shall not self-insure or otherwise retain such risks or portions thereof as it

may respecting other hotels it leases or manages. Notwithstanding the foregoing, all insurance policies and coverages shall be subject to the requirements of all Mortgages and any License Agreement.

12.5 Policies and Endorsements.

12.5.1 Where permitted and as applicable, all insurance provided under this Article 12 shall be carried in the name of Manager, Owner, Fee Owner and each of their officers, members, partners, shareholders, directors, agents, Affiliates, employees, successors and assigns, Licensor and the holder of the Mortgage on the Hotel, if any, shall be named as additional insureds on any insurance hereunder and any losses thereunder shall be payable to the parties as their respective interests may appear. To the extent any insurance is carried in the name of Owner, Manager and its officers, members, partners, shareholders, directors and employees shall be named as additional insureds on any such policies and any losses thereunder shall be payable to the parties as their respective interests may appear. The party procuring such insurance shall deliver to the other party certificates of insurance respecting all policies so procured, including existing, additional and renewal policies and, in the case of insurance about to expire, shall deliver certificates of insurance respecting the renewal policies within ten (10) days of the respective expiration dates.

12.5.2 All policies of insurance provided under this Article 12 shall, to the extent obtainable, have attached an endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days prior notice to Owner, Manager, any Franchisor and the holder of the Mortgage.12.6

12.6. **Waiver of Subrogation.** Owner and Manager each waive their respective rights of subrogation against each other.

12.7. **Mortgage Requirements.** Insurance shall be maintained in a manner consistent with the terms and conditions of any Mortgage and any conflict between those terms and conditions and the provisions of this Agreement shall be resolved in favor of the Mortgage.

ARTICLE 13 REAL AND PERSONAL PROPERTY TAXES; UTILITIES

13.1 **Taxes.** Manager shall, on behalf of Owner, pay from the Total Operating Revenues, on or before the dates the same become delinquent, with the right to pay the same in installments to the extent permitted by law, all real estate taxes, all personal property taxes and all betterment assessments levied against the Hotel or any of its component parts. Manager shall promptly deliver to Owner all notices of assessments, valuations and similar documents to be filed by Manager or Owner, which are received from taxing authorities by Manager. Owner shall have the right to hire property tax consultants or like professionals that reasonably provide economic benefits to Owner and the costs thereof shall be a part of Gross Operating Expenses. Notwithstanding the foregoing obligations of Manager, Owner may elect to contest the validity or the amount of any such tax or assessment, provided that such contest does not materially jeopardize Manager's rights under this Agreement. Manager agrees to cooperate with Owner and execute any documents or pleadings required for such purpose, provided Owner agrees to reimburse Manager for any out-of-pocket costs occasioned to Manager by any such contest. At Owner's election, all costs relating to any such contest may be paid from the Operating Account but will not be included as Gross Operating Expenses.

13.2 **Utilities, Etc.** Manager shall promptly pay all fuel, gas, light, power, water, sewage, garbage disposal, telephone and other utility bills currently as required to operate the Hotel from the Total Operating Revenues.

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ARTICLE 14 USE OF NAME

14.1 **Name.** During the Term of this Agreement, the Hotel shall at all times be known by the hotel name designated on Schedule I or by such other name as from time to time may be agreed upon by Owner and Manager. Manager shall not use or employ such name unless such use fully complies with the terms of the License Agreement, if any.

ARTICLE 15 DAMAGE OR DESTRUCTION; CONDEMNATION

15.1 **Damage or Destruction.** (a) If the Hotel or any portion thereof shall be damaged or destroyed at any time or times during the Term by fire, casualty or any other cause commonly covered by fire and extended coverage insurance and the cost of repairing such damage and restoring the Hotel to substantially its condition immediately prior to such damage or destruction, as reasonably estimated by Owner based upon estimates Owner receives from contractors and other reasonable and customary evidence, will not exceed the sum of \$1,000,000 plus adjustments to reflect increases in the CPI for each Fiscal Year after 2018 exclusive of the cost of the foundation and footings ("**Minimum Cost**"), Owner will, at its own cost and expense (subject to Owner's receipt of insurance proceeds sufficient to pay such costs and expenses) and with due diligence repair and/or restore the Hotel so that after such repair and/or restoration, the Hotel shall be in substantially the same condition as it was immediately prior to such damage or destruction.

(b) If the cost of such repair and/or restoration will, as so reasonably estimated by Owner, exceed the Minimum Cost, then Owner shall, within one hundred twenty (120) days after such damage or destruction, elect by notice to Manager either (x) to carry out such repair and/or restoration, in which case Owner shall complete such repair and/or restoration pursuant to the last sentence of Section 15.1(a) or (y) to terminate this Agreement; should Owner so elect to terminate this Agreement. Upon the termination of this Agreement pursuant to this paragraph, Operator shall be entitled to a Reinstatement Right for a period of 24 months from the date of termination.

(c) In the case of damage or destruction which Owner is required by the preceding provisions of this Section 15.1 to repair or restore or where Owner has not elected under said preceding provisions to terminate this Agreement, Owner shall undertake to so repair and/or restore such damage or destruction and neither Owner nor Manager shall have a right to terminate this Agreement on account of such damage or destruction.

15.2 **Condemnation.** If the whole of the Hotel shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority or if such a portion thereof shall be taken or condemned as to make it imprudent or unreasonable, in the sole opinion of Owner, to use the remaining portion as a hotel of the type and class immediately preceding such taking or condemnation, then the Term shall terminate as of the date title vests in the condemning authority. Manager has no interest in any award paid to Owner and Manager shall make no claim against the condemner for any loss to its business as a result of such condemnation or otherwise. If only a part of the Hotel shall be taken or condemned and the taking or condemnation of such part does not, in the opinion of Owner, make it unreasonable or imprudent to operate the remainder as a hotel of the type and class immediately preceding such taking or condemnation, this Agreement shall not terminate, and so much of any award to Owner shall be made available as shall be reasonably necessary for making alterations or modifications of the Hotel, or any part thereof, so as to make it a satisfactory architectural unit as a hotel of similar type and class as prior to the taking or condemnation.

15.3. **Mortgage Requirements.** Actions as to damage or destruction and condemnation shall be taken only in a manner that is consistent with the terms and conditions of the Mortgage and any conflict between those terms and conditions and the provisions of this Agreement shall be resolved in favor of the Mortgage.

ARTICLE 16 EVENTS OF DEFAULT

16.1 **Manager Defaults.** Subject to the conditions contained in Section 17.3 below, each of the following shall constitute an Event of Default by Manager:

(a) The failure of Manager to pay any sum of money to Owner provided for herein when the same is payable, if such failure is not cured within ten (10) days after written notice specifying such failure is given by Owner to Manager

(b) An assignment by Manager in violation of the provisions of Article 23 hereof.

(c) If Manager shall fail to keep, observe or perform any other material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Manager and such failure shall continue for a period of thirty (30) days after written notice specifying such failure given by Owner to Manager, or if Manager due to any act or omission on the part of Manager and without the fault of Owner, shall fail to maintain the Permits and such failure shall continue for a period of thirty (30) days after written notice specifying such failure given by Owner to Manager; provided that if such failure is incapable of cure within such thirty (30) day period, then the cure period shall be extended provided that Manager commenced the cure during such initial thirty (30) day period and thereafter diligently and continuously pursues the cure thereof to completion.

(d) If because of any act or omission on the part of Manager, and without the fault of Owner, either (i) the License Agreement or (ii) any required license for the sale of alcoholic beverages at the Hotel, is at any time suspended, terminated or revoked for a period of more than thirty (30) consecutive days, provided, however, if, at the end of such thirty (30) day period the cure has not been effectuated notwithstanding Manager's diligent and continuous attempts to cure, then the cure period shall be extended for an additional period of ninety (90) days.

(e) If Manager shall fail to maintain and operate the Hotel in accordance with the standards required under Section 4.1 and such failure shall not be due to a refusal on the part of Owner to approve the Annual Plan submitted by Manager under Section 4.4 or Owner's failure to properly provide funds requested pursuant to the provisions of Article 9 and such failure shall continue for a period of sixty (60) days after written notice by Owner to Manager specifying the matters or conditions which constitute the basis for such Event of Default, provided that if such failure is not reasonably capable of cure within such sixty (60) day period, then the cure period shall be extended provided that Manager commences the cure during such initial sixty (60) day period and thereafter diligently and continuously pursues the cure thereof to completion.

(f) If Manager shall apply for or consent to the appointment of a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets, admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Manager in any bankruptcy, reorganization or judgment or if an order, judgment or decree shall be entered by any court of competition jurisdiction, on the application of a creditor, adjudicating Manager bankrupt or insolvent or approving a petition seeking reorganization of Manager or appointing a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

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(g) The filing of a voluntary petition in bankruptcy or insolvency or a petition for liquidation or reorganization under any bankruptcy law by Manager, or Manager shall consent to, acquiesce in, or fail timely to controvert, an involuntary petition in bankruptcy, insolvency or an involuntary petition for liquidation or reorganization filed against it.

(h) The filing against Manager of a petition seeking adjudication of Manager as insolvent or seeking liquidation or reorganization or appointment of a receiver, trustee or liquidator of all or a substantial part of Manager's assets, if such petition is not dismissed within ninety (90) days.

(i) Failure of Manager (but excluding such a failure which results from the failure by Owner to provide the necessary funds therefor) to maintain at all times throughout the term hereof all of the insurance required to be maintained by Manager under Article 12, if such failure is not cured within fifteen (15) days after written notice specifying such failure is given by Owner to Manager.

(j) The fraud, gross negligence, willful misconduct or criminal conduct of or by Manager in connection with the Hotel.

16.2 Owner Defaults. Each of the following shall constitute an Event of Default by Owner:

(a) The failure of Owner to pay or furnish to Manager any money Owner is required to pay or furnish to Manager in accordance with the terms hereof on the date the same is payable, if such failure is not cured within five (5) days after written notice specifying such failure is given by Manager to Owner. If any sum of money is not paid within five (5) days following the date same becomes due and payable under this Agreement, and Manager has advanced such sum on behalf of Owner, such sum shall bear interest at the Default Rate from the date Manager advanced such sum on behalf of Owner until the date Owner actually pays such sum. If the failure to pay relates to the Management Fee, such sum shall bear interest at the Default Rate from the date due until the date actually paid.

(b) If because of a default under the Mortgage, if any, not caused by the act or omission of Manager, the Mortgage shall be foreclosed, or the Hotel sold in lieu of foreclosure.

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(c) If Owner shall apply for or consent to the appointment of a receiver, trustee or liquidator of Owner of all or a substantial part of its assets, or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Owner in any bankruptcy, reorganization or insolvency proceeding, or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Owner a bankrupt or insolvent or approving a petition seeking reorganization of Owner or appointing a receiver, trustee or liquidator of Owner or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

(d) The filing of a voluntary petition in bankruptcy or insolvency or a petition for liquidation or reorganization under any bankruptcy law by Owner, or Owner shall consent to, acquiesce in, or fail timely to controvert, an involuntary petition in bankruptcy, insolvency or an involuntary petition for liquidation or reorganization filed against it.

(e) The filing against Owner of a petition seeking adjudication of Owner as insolvent or seeking liquidation or reorganization or appointment of a receiver, trustee or liquidator of all or a substantial part of Owner's assets, if such petition is not dismissed within ninety (90) days.

(f) Failure of Owner to maintain at all times throughout the term hereof all of the insurance required to be maintained by Owner under Article 12, if such failure is not cured within fifteen (15) days after written notice specifying such failure is given by Manager to Owner.

(g) The failure of Owner to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement, or the failure of Owner to approve expenditures or to authorize procedures necessary to maintain the standards of the Hotel in accordance with the Operating Standards, if such failure shall continue for a period of sixty (60) days after written notice by Manager or Licensor to Owner specifying the matters or conditions which constitute the basis for such Event of Default, provided that if such failure is incapable of cure within such sixty (60) day period, then the cure period shall be extended provided that Owner commences the cure during such initial sixty (60) day period and thereafter diligently and continuously pursues the cure thereof to completion.

ARTICLE 17

TERMINATION UPON EVENT OF DEFAULT; OTHER REMEDIES; OTHER MANAGER TERMINATION

17.1 **Termination.** Upon the occurrence of an Event of Default, in addition to and cumulative of any and all rights and remedies available to the non-defaulting party under this Agreement, at law or in equity, the non-defaulting party may: (a) terminate this Agreement without penalty, effective upon receipt of written notice of termination to the defaulting party, provided that termination may be effective immediately in the case of fraud, gross negligence, willful misconduct, criminal conduct or misappropriation of funds; and (b) pursue any and all other remedies and damages available to the non-defaulting party at law or in equity. In addition to and cumulative of the foregoing, upon the occurrence of any Event of Default on the part of Owner, all Management Fees, Reimbursable Expenses and all other sums payable to Manager under this Agreement shall be immediately due and payable without notice. In no event shall the provisions of this Agreement with respect to the any allowed termination of this Agreement under certain circumstances be construed as defining or limiting the amount recoverable by Manager from Owner by reason of any Event of Default on the part of Owner.

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17.2 **Manager's Rights to Perform.**

If Owner shall fail to make any payment or to perform any act required of Owner pursuant to this Agreement, Manager may (but shall not be obligated to), without further notice to, or demand upon, Owner and without waiving or releasing Owner from any obligations under this Agreement, make such payment (either with its own funds or with funds withdrawn for such purpose from the Operating Accounts or the Reserve) or perform such act. All sums so paid by Manager and all necessary incidental costs and expenses incurred by Manager in connection with the performance of any such act, together with interest thereon at the Default Rate from the date of making such expenditure by Manager, shall be payable to Manager on demand.

Manager shall have the right to set-off against any payments to be made to Owner by Manager under any provision of this Agreement and against all funds from time to time in the Operating Accounts and the Reserve, any and all liabilities of

(b) Owner to Manager. Manager may withdraw from the Operating Accounts and the Reserve from time to time such amounts as Manager deems desirable in partial or full payment of all or any portion of said liabilities, the amount of such withdrawals to be paid by Owner to Manager on demand and to be replaced in the respective account and fund.

17.3 **Excused Non-Performance.** Notwithstanding any contrary provision of this Agreement, Manager shall be excused from the performance of any obligation hereunder (including the obligation to operate the Hotel in conformity with the Operating Standards), and shall not be deemed in default, for such period of time as such performance is prevented by a breach of this Agreement by Owner or a limitation imposed on Manager's ability to expend funds in respect of the Hotel, due to Owner's act or Owner's failure to act upon Manager's request for funds or payment of Gross Operating Expenses, including, Working Capital and/or payroll costs (provided Manager has provided Owner with reasonably timely notice of the need for additional funds and that the failure to expend or make payment of the same shall reasonably prevent Manager from meeting such obligation).

ARTICLE 18 OWNER'S ADDITIONAL TERMINATION RIGHTS

18.1 **Sale of the Hotel.** If the Hotel is sold or is otherwise disposed of the Hotel any interests therein, to a bona fide third-party (the "**Third-Party Purchaser**"), this Agreement will terminate effective upon the consummation of the closing of such sale. Owner shall provide Manager with written notice of termination of this Agreement not less than sixty (60) days prior to the scheduled date of closing of the sale of the Hotel, provided, however, if such a sale does not actually occur, the notice of termination shall be deemed ineffective and no such termination shall occur. Upon such sale, the Manager shall be entitled to a termination fee equal to the average monthly Base Fees payable hereunder prior to such sale multiplied by 12.

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18.2 **No Other Termination Right.** Except as expressly provided herein, the Owner shall not have any other "without cause" or similar discretionary right to terminate the Manager hereunder.

ARTICLE 19 INTENTIONALLY OMITTED

ARTICLE 20 TRANSFER TO OWNER UPON TERMINATION

Upon the termination or expiration of the Term of this Agreement, whether due to the occurrence of an Event of Default or otherwise, Manager shall cooperate with Owner and shall execute those documents or instruments reasonably requested by Owner in connection with the transfer or reissue the Permits, without payment of a fee to Manager, to Owner or its nominee, provided that Manager shall not be required to incur liability or out of pocket cost in connection with such transfer. Without limiting the generality of the foregoing, Manager shall cause its officials to execute documents and visit licensing authorities, along with Owner's representatives, in order to expedite the orderly transfer or reissuance to Owner or its designee of the Permits. Following the termination or expiration of the Term, Manager will prepare provide a final accounting report in accordance with the provisions set forth in Section 10.2(c) of this Agreement and in the same manner and scope as previously provided by Manager following prior Fiscal Years under this Agreement. In the event that Owner requests additional reports or assistance from Manager following the termination or expiration of this Agreement, Owner shall pay to Manager the such reasonable fees as determined by the Manager through the date on which such additional services or assistance are to be provided. In the event that this Agreement terminates due to any reason other than a default by Manager under this Agreement, a sufficient number of Hotel Employees will be hired by Owner or its successor, assign or designee, and retained for at least 90 days thereafter, so as not to cause a "mass layoff" or "plant closing", as defined in the Workers Adjustment and Retraining Act, 29 USC, sec 2101 et seq.

ARTICLE 21 NOTICES

All notices, elections, acceptances, demands, consents and reports (collectively "**notice**") provided for in this Agreement shall be in writing and shall be given to the other party at the address set forth below or at such other address as any of the parties hereto may hereafter specify in writing.

To Owner: PHR CHERRY OPCO SUB, LLC
1140 Reservoir Avenue
Cranston, RI 02920
Attn: Gregory D. Vickowski
Telephone: (401) 946-4600
Email: gvick@procaccianti.com

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With a copy to: Ron M. Hadar, General Counsel
Procaccianti Companies
1140 Reservoir Avenue
Cranston, Rhode Island 02920
Telephone: (401) 946-4600
Email: rhadar@procaccianti.com

To Manager: 1140 Reservoir Avenue
Cranston, Rhode Island 02920
Attn: Elizabeth A. Procaccianti
Telephone: (401) 946-4600
Email: bproc@procaccianti.com

With a copy to: Natasha Ruane, Corporate Counsel
Procaccianti Companies
1140 Reservoir Avenue
Cranston, Rhode Island 02920
Telephone: (401) 946-4600
Email: nruane@procaccianti.com

Such notice or other communication may be given by email between the hours of 9 a.m. to 5 p.m. EST, Monday through Friday or Federal Express or other nationally recognized overnight carrier in which case notice shall be deemed given upon confirmed delivery. Notice may be mailed by United States registered or certified mail, return receipt requested, postage prepaid, deposited in a United States post office or a depository for the receipt of mail regularly maintained by the post office. If mailed, then such notice or other communication shall be deemed to have been received by the addressee on the fifth (5th) day following the date of such mailing. Such notices, demands, consents and reports may also be delivered by hand, in which case it shall be deemed received upon delivery.

**ARTICLE 22
CONSENT AND APPROVAL**

Except as herein otherwise provided, whenever in this Agreement the consent or approval of Manager or Owner is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent or approval shall also be in writing only and shall be executed only by an authorized officer or agent of the party granting such consent or approval.

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ARTICLE 23

NON-ASSIGNABILITY

This Agreement shall not be assignable by Manager or Owner; provided however, that either party shall be entitled to assign this Agreement to an Affiliate of such party as part of a modification to such party's company structure in which all or substantially all of such party's assets are transferred to an Affiliate of such party; and Manager shall have the right to assign its rights to receive payments under this Agreement as security for indebtedness or other obligations. Notwithstanding the foregoing, any "assignment" by Manager to a successor entity resulting from a merger, acquisition, disposition or consolidation of all or substantially all of the equity or assets of Manager shall be permitted and not require the consent of Owner hereunder so long as (i) either (A) the "Manager" under this Agreement remains controlled by at least any two of James A. Procaccianti, Elizabeth A. Procaccianti, Gregory D. Vickowski, Robert Leven, or Mark Bacon (the "**Executive Team**") or, (B) if Manager is itself, or is controlled by, a corporation whose stock is listed and publicly traded over-the-counter on a nationally recognized stock exchange in the United States, so long as at least two (2) members of the Executive Team are on the Board of that corporation, (ii) the assignee continues to comply with all of the obligations of Manager hereunder, (iii) the assignee, in Owner's good faith reasonable judgment, has the skill, experience, professional resources and financial ability to perform under this Agreement and can provide the comparable operating, management and financial reporting functions of Manager under this Agreement consistent with the Operating Standards, including without limitation providing the Centralized Services and holding the right to use all trademarks and proprietary information related to the Hotel, and (iv) no such assignment shall cause Owner to be in default under the Franchise Agreement or under the Mortgage.

ARTICLE 24 INDEMNITY

24.1 **Indemnity by Manager.** To the extent that Owner shall not be fully covered by insurance required to be maintained pursuant to this Agreement, Manager shall indemnify, defend and hold harmless Owner, any director, officer, agent or officer or any corporate partner thereof, from and against any damages, loss, liability, cost, action, cause, claim or expense, including attorneys' fees, arising out of or in connection with the management and operation of the Hotel including, without limitation, all employment related claims and litigation (collectively, the "**Liabilities**"). The costs of such indemnity shall be borne as follows:

(a) If the Liabilities are attributable to the gross negligence or willful misconduct of the Executive Personnel, the cost thereof shall be borne solely by Manager and not paid out of Total Operating Revenues.

(b) If the Liabilities are attributable to any other reason or cause, the cost of such indemnification shall be paid as a Gross Operating Expense of the Hotel or failing payment of the same, by Owner.

Manager's obligations under this Section 24.1 shall not include any losses, expenses or damages arising from any matters relating to the structural integrity of the Hotel or other matters relating to defects in design, materials or workmanship in the construction of the Hotel.

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24.2 **Indemnity by Owner.** To the extent that Manager shall not be fully covered by insurance required to be maintained pursuant to this Agreement or if, after giving effect to the provisions of Section 24.1(b) of this Agreement, Total Operating Revenues are not sufficient to pay all Liabilities, Owner shall indemnify, defend and hold harmless Manager and its directors, officers, employees and agents from and against any damages, loss, liability, cost, action, cause, claim or expense, including attorneys' fees, arising out of, or incurred in connection with the management and operation of the Hotel.

24.3 **Survival.** The provisions of this Article 24 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 25 PARTIAL INVALIDITY

In the event that any one or more of the phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court, this Agreement shall be construed as if such phrases, sentences, clauses or paragraphs had not been inserted, unless such construction would substantially destroy the benefit of the bargain of this Agreement to either of the parties hereto.

ARTICLE 26
MISCELLANEOUS

26.1 **Disputes.** Whenever any issue or dispute arises under this Agreement relating to the Annual Operating Budget, the Approved Capital Budget and or the calculation and payment of the Reserves, and the Management Fee, such issue or dispute shall be resolved utilizing the Uniform System of Accounts and the by application of GAAP consistently applied.

26.2 **Further Assurances.** Owner and Manager shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between them and as against third parties.

26.3 **Waiver.** The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed a waiver of such terms and conditions on any future occasion.

26.4 **Successors and Assigns.** Subject to and limited by Article 23, this Agreement shall be binding upon and inure to the benefit of Owner, its successors and permitted assigns, and shall be binding upon and inure to the benefit of Manager, its successors and permitted assigns.

26.5 **Governing Law.** This Agreement shall be construed, both as to its validity and as to the performance of the parties, in accordance with the laws of the State of Michigan.

26.6 **Compliance with Mortgage and License Agreement.** In carrying out their respective duties and obligations under the terms of this Agreement, Owner and Manager shall take no action that could reasonably be expected to constitute a material default under any Mortgage or the License Agreement and will take such actions as are reasonably necessary to comply therewith.

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26.7 **Amendments.** This Agreement may not be modified, amended, surrendered or changed, except by a written document signed by the Owner and Manager agreeing to be bound thereby.

26.8 **Estoppel Certificates.** Owner and Manager agree, at any time and from time to time, as requested by the other party, upon not less than ten (10) days' prior written notice, to execute and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and stating the modifications), certifying the dates to which required payments have been paid, and stating whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default of which the signer may have knowledge, it being intended that such statement delivered pursuant hereto may be relied upon by others with whom the party requesting such certificate may be dealing

26.9 **Unavoidable Interruptions.** Subject to the express limitations set forth in this Agreement and excluding those obligations that accrue prior to the occurrence of an event of Unavoidable Interruption or obligations that, if not performed, would cause a material adverse effect on the Hotel or its operations (for instance, the requirement to maintain the Permits or insurance obligations hereunder), if either party's failure to comply with, perform or satisfy any representation, warranty, covenant, undertaking, obligation or condition set forth in this Agreement is caused by or due to, in whole or in part, any Unavoidable Interruption, such representation, warranty, covenant, undertaking, obligation or condition (except regarding insurance coverages and monetary payments) shall be adjusted to the extent and for so long as such party's failure is caused by or due to, in whole or in part, such Unavoidable Interruption.

26.10 **Inspection Rights.** Owner shall have the right to inspect the Hotel and examine the books and records of Manager pertaining to the Hotel at all reasonable times during the Term upon reasonable notice to Manager, and Owner and the holder of any Mortgage shall have access to the Hotel and the books and records pertaining thereto at all times during the Term to the extent necessary to comply with the terms of any Mortgage, all to the extent consistent with applicable law and regulations and the rights of guests, tenants and concessionaires of the Hotel.

26.11 **Subordination.** This Agreement, any extension hereof and any modification hereof shall be subject and subordinate to a Mortgage as provided therein. The provisions of this Section shall be self-operative and no further instrument of subordination shall be

required; however, Manager will execute and return to Owner (or to Lender, as designated by Owner) such documentation as Owner or Lender may reasonably request to evidence the subordination of this Agreement to the Mortgage.

26.12 Effect of Approval of Plans and Specifications. Owner and Manager agree that in each instance in this Agreement or elsewhere wherein Manager is required to give its approval of plans, specifications, budgets and/or financing, no such approval shall imply or be deemed to constitute an opinion by Manager, nor impose upon Manager any responsibility for the design or construction of additions to or improvements of the Hotel, including but not limited to structural integrity or life/safety requirements or adequacy of budgets and/or financing. The scope of Manager's review and approval of plans and specifications is limited solely to the adequacy and relationship of spaces and aesthetics of the Hotel in order to comply with the Operating Standards.

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26.13 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written.

26.14 Time is of the Essence. Time is of the essence in this Agreement.

26.15 Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

26.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the parties hereto and all of which shall constitute one and the same agreement.

26.17 No Electronic Transactions. The parties hereby acknowledge and agree that this Agreement shall not be executed, entered into, altered, amended or modified by electronic means. Without limiting the generality of the foregoing, the parties hereby agree that the transactions contemplated by this Agreement shall not be conducted by electronic means, except as specifically set forth in Article 21 of this Agreement.

26.18 Prohibited Persons and Transactions.

(a) Manager is not, and shall not become, a person or entity with whom U. S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named in OFAC's Specially Designated and Blocked Person's List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, or Support Terrorism), or other governmental action (such persons and entities being "**Prohibited Persons**").

(b) Owner is not and shall not become a Prohibited Person.

26.19 Confidentiality. Owner and Manager agree to keep the terms and conditions of all leases and other occupancy agreements in effect at the Hotel (if any) and all other accruals relating to the Hotel, together with all information and data obtained, possessed, or generated by Manager in connection with the Hotel (collectively, "**Privileged Information**"), strictly confidential and not to make any public announcements or any disclosures to any third parties, either orally or in writing, with respect to any Privileged Information without the express written consent of the other party hereunder; provided, however, the restrictions imposed hereby shall not apply to any Privileged Information (1) which is required to be disclosed in order to comply with any law, ordinance, governmental decree or any rule, regulation or decree of any interested governmental body or (2) which must otherwise be disclosed to relevant third parties, including accountants, attorneys and lenders, in the course of reasonable and diligent management and operation of the Hotel or the business of Owner, or any subsidiary or Affiliate of Owner or Manager. If Manager makes such disclosure, it shall notify such third party of this provision and of the requirement of Owner for confidentiality. The provisions of this Section 26.19 shall survive the expiration or termination of this Agreement for two (2) years after any termination or expiration of this Agreement.

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26.20 **No Third Party Rights.** This Agreement shall inure solely to the parties hereto. Notwithstanding any other provision of this Agreement, no third party shall have any rights pursuant to the terms of this Agreement.

ARTICLE 27
NO REPRESENTATIONS AS TO INCOME OR FINANCIAL SUCCESS OF HOTEL

In entering into this Agreement, Manager and Owner acknowledge that neither Owner nor Manager has made any representation to the other regarding projected earnings, the possibility of future success or any other similar matter respecting the Hotel, and that Manager and Owner understand that no guarantee is made to the other as to any specific amount of income to be received by Manager or Owner or as to the future financial success of the Hotel.

ARTICLE 28
REPRESENTATIONS OF MANAGER

In order to induce Owner to enter into this Agreement, Manager does hereby make the following representations and warranties:

(a) the execution of this Agreement is permitted by the certificate of formation and partnership agreement of Manager and this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Manager enforceable in accordance with the terms hereof;

(b) to the best knowledge of Manager, there is no claim, litigation, proceeding or governmental investigation pending, or, as far as is known to Manager, threatened, against or relating to Manager, the properties or business of Manager or the transactions contemplated by this Agreement which does, or may reasonably be expected to, materially and adversely affect the ability of Manager to enter into this Agreement or to carry out its obligations hereunder, and to the best knowledge of Manager, there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Owner; and

(c) neither the consummation of the transactions contemplated by this Agreement on the part of Manager or to be performed, nor the fulfillment of the terms, conditions and provisions of this Agreement, conflicts with or will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Manager is a party or by which it is bound.

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ARTICLE 29
REPRESENTATIONS OF OWNER

In order to induce Manager to enter into this Agreement, Owner does hereby make the following representations and warranties:

(a) the execution of this Agreement is permitted by the Limited Liability Company Agreement of Owner and this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligation of Owner enforceable in accordance with the terms hereof;

(b) there is no claim, litigation, proceeding or governmental investigation pending, or as far as is known to Owner, threatened, against or relating to Owner, the properties or business of Owner or the transactions contemplated by this Agreement which does, or may reasonably be expected to, materially and adversely affect the ability of Owner to enter into this Agreement or to carry out its obligations hereunder, and there is no basis for any such claim, litigation, proceedings or governmental investigation, except as has been fully disclosed in writing to Manager; and

(c) neither the consummation of the transactions contemplated by this Agreement by this Agreement on the part of Owner to be performed nor the fulfillment of the terms, conditions and provisions of this Agreement, conflicts with or will result in the breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement, indenture, instrument or undertaking to which Owner is a party or by which it is bound.

ARTICLE 30

DISPUTE RESOLUTION

Except as specifically provided in Section 4.4 of this Agreement, Owner and Manager agree that any dispute between the parties related to or arising out of this Agreement that cannot be amicably settled by the parties hereunder, shall first be submitted for non-binding mediation before resorting to any litigation, equitable proceeding or other enforcement action. Such mediation shall be held within a twenty-five mile radius of the Hotel (or such other location mutually agreed by the parties) and the parties shall cooperate in good faith to agree on a mediator who shall be a retired or semi-retired judge having at least ten (10) years of experience on the bench hearing complex commercial transactions. If the parties hereto have failed to designate, by a joint written statement, a mediator within thirty (30) days following the date of a written request therefor by either Manager or Owner to the other, then either Owner or Manager may notify the local office of the American Arbitration Association ("AAA") or JAMS and request such entity to select a person to act as the mediator to assist in the resolution of the dispute. The mediation will be a non-binding conference between the parties conducted in accordance with the applicable rules and procedures of AAA or JAMS (as determined by the mediator). The compensation of the mediator and all related expenses shall be borne equally by the parties, each of whom shall bear their own costs, irrespective of the outcome of the mediation. If any dispute remains unresolved between the parties after the mediation is complete, then either party shall be entitled to pursue its rights and remedies at law or in equity. The provisions of this Article 30 shall survive the expiration or earlier termination of this Agreement.

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ARTICLE 31 ADDITIONAL OBLIGATIONS OF MANAGER

Manager acknowledges that Owner is vitally interested in the qualifications of the individuals designated as the general manager and the director of sales of the Hotel. Manager shall, from time to time, consult with Owner and obtain Owner's approval as to the appointment of individuals to such positions; provided, however, Owner and Manager acknowledge that nothing in this Article is intended to limit or negate the authority of Manager elsewhere provided in this Agreement to remove and replace, in its sole discretion, the Executive Personnel of the Hotel.

ARTICLE 32 TERMINATION OF THE LICENSE AGREEMENT

Owner reserves and shall have the absolute right in its sole and unfettered discretion, at any time and without the consent or approval of (but with notice to) Manager, to terminate the License Agreement, provided, however, that (i) Owner shall have no such right in order to establish its own independent operations, such as an operation without a franchise or license or in its own hotel name; (ii) in the event of such a termination by Owner, Manager shall have the right of approval (which right shall be reasonably exercised) of any new franchise or license for the Hotel; and (iii) if Owner's decision to terminate the License Agreement is made without the consent of Manager, then the provisions of Section 18.2 of this Agreement shall no longer apply.

ARTICLE 33 RECOURSE

Any provision of this Agreement to the contrary notwithstanding, Manager hereby agrees that no personal, partnership or corporate liability of any kind or character (including, without limitation, the payment of any judgment) whatsoever now attaches or at any time hereafter under any condition shall attach to Owner or any of Owner's constituent entities and affiliates or any mortgagee for payment of any amount payable under this Agreement or for the performance of any obligation under this Agreement. The exclusive remedies of Manager for the failure of Owner to perform any of its obligations under this Agreement shall be to proceed against the interest of Owner in and to the Hotel for Manager's actual, out-of-pocket damages (and not any consequential, punitive or exemplary damages), and Owner shall not be personally liable for any deficiency.

Notwithstanding any other provision of this Agreement to the contrary, the liability of Manager arising out of or in connection with this Agreement and the transactions and obligations contemplated hereby shall at all times be limited to the aggregate amount of management fees payable to Manager under this Agreement during the initial Term (the "**Manager's Liability Cap**"), and in any litigation, arbitration or any other dispute, neither Owner nor any other party shall seek or have recourse to any other asset of Manager's members, partners, directors, officers, employees, associates, agents, executives or affiliates. Without limiting the foregoing, neither Manager nor any party associated with Manager shall have any liability in excess of the Manager's Liability Cap for any act by Manager (either prior to or during the Operating Term of or after the expiration or earlier termination of this Agreement); provided, however, that

the Manager Liability Cap shall not apply to any liability of Manager or its Affiliates resulting from the fraud, gross negligence or willful misconduct of Manager or its Affiliates. Notwithstanding anything contained in this Agreement to the contrary in no event shall Manager be liable under this Agreement for any consequential, speculative, punitive, treble, or other special damages.

The rest of this page is intentionally left blank.

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IN WITNESS WHEREOF, Owner has caused this Agreement to be executed and its seal affixed by its partners duly authorized thereunto and Manager has caused this Agreement to be executed and its seal affixed by its officer duly authorized thereunto, the day and year first above written, in duplicate.

OWNER:

PHR CHERRY OPCO SUB, LLC

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Authorized Representative

MANAGER:

PHR CHERRY TREE HOTEL MANAGER, LLC

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Manager

Signature Page to Management Agreement - Solo Page

SCHEDULE I

Trade Name/Brand of Hotel:	Cherry Tree Inn and Suites
Physical Address of Hotel:	2345 N. US 31 North, Grand Traverse City, MI
Number of Guest Rooms:	76
Licensor:	None
Initial Working Capital:	\$TBD

Base Fee:

The base fee payable (the "**Base Fee**") shall be an amount equal to three percent (3.0%) of Total Operating Revenues (which exclude the gross receipts of any licensees, lessees and concessionaires) in respect of any applicable period; provided, however, in the event that such 3.0% of revenues in any month is less than \$7,500.00 (the "Minimum Monthly Charge") the Owner will pay Manager the Minimum Monthly Charge for such month.

Centralized Services Fee:	A centralized service fee of \$2,500 minimum per month shall be charged in addition to any other fees and costs constituting a Centralized Service
Incentive Fee:	None

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**SCHEDULE II
Gross Operating Expenses**

1.1 **Gross Operating Expenses.** “Gross Operating Expenses” means, except to the extent excluded below or in the Agreement, all costs and expenses of operating the Hotel during the Term pursuant to this Agreement attributable to the Accounting Period, Fiscal Year or portion of a Fiscal Year under consideration including, without limitation, the following:

- (a) salaries and wages of Hotel Employees, including employee benefits, costs of payroll, and payroll and similar taxes but only to the extent such expenses are attributable to such Hotel Employee’s employment at the Hotel;
- (b) costs incurred with respect to sales and other revenues generated at the Hotel;
- (c) the costs of all utilities and services including, without limitation, heat, air conditioning, water, light and power, local and long distance telephone service, and data communication and computer services, except as such costs may be appropriately capitalized in accordance with GAAP;
- (d) the costs of all food and beverages sold or consumed and of all Operating Equipment and Inventories and Consumable Supplies placed in use, including the sale, consumption and placement in use of Operating Equipment and Supplies initially supplied pursuant to this Agreement;
- (e) the costs of all other goods and services provided, arranged or obtained by Manager in connection with its operation of the Hotel, including, without limitation, public utilities charges and the cost of accounting systems, data processing, payroll processing and telecommunications equipment, office supplies, services performed by third parties and all other supplies, services and hotel equipment of the nature and type normally used by operators of hotels similar to the Hotel and as is common in the industry, except as such costs may be appropriately capitalized in accordance with GAAP;
- (f) all costs and fees of any arbitrators, auditors, lawyers and similar persons who perform services required or permitted pursuant to this Agreement;
- (g) all costs and expenses of technical consultants and specialized operational experts or personnel for services rendered to the Hotel, except if such costs are incurred in connection with a capital transaction outside of the normal operations of the Hotel;
- (h) all expenses related to marketing of the Hotel;
- (i) the costs of maintaining books of account and other records and producing statements pursuant to Article 7 of this Agreement;

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(j) the actual amount of any goods and services or other similar value added taxes imposed by any governmental authority having jurisdiction and paid as a result of the operations of the Hotel, less any credits with respect to such taxes otherwise granted with respect to the operations of the Hotel;

(k) reasonable reserves for bad debts in accordance with GAAP;

(l) any insurance premiums for insurance obtained by or on behalf of Manager or Owner with respect to the Hotel, except for insurance premiums for Manager's or Manager's Affiliates' corporate office professional liability/errors and omissions;

(m) any deposits into any Reserve;

(n) all Property taxes and any similar taxes, charges and assessments against the Hotel;

(o) any fees payable under the License Agreement to Licensor;

(p) the Base Fee and the Centralized Services;

(q) Allocated Services;

(r) the cost of non-capital repairs to and maintenance of the Hotel;

(s) all expenses otherwise contemplated by this Agreement that are to be treated or contemplated to be treated as Gross Operating Expenses; and

(t) all expenses reimbursable to Manager pursuant to the terms and conditions of this Agreement.

1.2 Exclusions from Gross Operating Expenses. For purposes of calculating the fees payable pursuant to this Agreement, Operating Expenses shall not include any of the following:

(a) any repayments of advances by Manager on account of Capital Expenditures pursuant to this Agreement;

(b) any payments from the FF&E Reserve, whether principal or interest, relating to capital improvements to or encumbrances with respect to the Hotel, including, without limitation, any payments relating to expenditures for initial FF&E and replacements or substitutions therefor or additions thereto;

(c) land or building rental or mortgage payments;

(d) depreciation and amortization expenses, including costs of capital improvements which are made in accordance with this Agreement;

(e) income, capital or franchise taxes of a party hereto;

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(f) any Capital Expenditures;

(g) excise, sales, use and other taxes (including room taxes) or similar charges (i) collected directly from patrons or guests or as part of the sale price of any goods or services or displays, (ii) remitted to a governmental authority and (iii) excluded from Gross Revenues;

- (h) salaries, wages, asset management fees or amounts paid to individuals or entities by or upon the instruction of Owner to the extent such individuals or entities are not under the supervision or direction of Manager;
- (i) interest payable on any credit facility provided to fund working capital; and
- (j) expenses of Owner related to asset management.

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SCHEDULE III

Total Operating Revenues

1.1 **Total Operating Revenues.** “**Total Operating Revenues**” means, subject to the exclusions provided for herein, all of the following revenue, income and proceeds resulting from the operation of the Hotel and properly attributable to the Accounting Period, Fiscal Year or portion of a Fiscal Year under consideration:

(a) Subject to the provisions below and in the Agreement, all revenues from the rental of guest rooms and suites in the Hotel and all revenues earned from guests, patrons and other persons occupying space in or using the Hotel, including, without limitation, all revenues derived from goods sold, food and beverage sales, meetings and other events, parking services, spa, health club or other Hotel facilities’ use or membership, telephone, cable or access television or internet use and all other services provided in connection with Hotel activities;

(b) The net proceeds actually received by Owner of use and occupancy or business interruption insurance with respect to the operation of the Hotel after deduction from such proceeds of all necessary expenses incurred in the adjustment or collection thereof.

1.2 **Exclusions from Total Operating Revenues.** For purposes of calculating the fees payable pursuant to this Agreement, Total Operating Revenues shall not include any of the following:

(a) excise, sales, use and other similar taxes (including room taxes) or similar charges which are required by Applicable Laws to be collected directly from patrons or guests or as part of the sale price of any goods or services or displays and which must be remitted to a governmental authority;

(b) bad debts arising from Total Operating Revenues, provided that any recovered bad debts shall again become part of Total Operating Revenues in the Fiscal Year in which they are recovered;

(c) gratuities, service charges or other similar receipts collected for payment to and paid to Hotel Employees and complimentary food and beverage bills for Hotel Employees (to the extent that the complimentary food and beverage expenditures do not exceed the amount set forth in Operating Budget unless Owner’s consent is received with respect to such excess amounts) the and guests;

(d) revenue, income and proceeds of sales of tenants, licensees and concessionaires;

(e) revenues, including gains or losses arising from the sale or other disposition of capital assets, including, without limitation, FF&E no longer required for the operation of the Hotel;

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- (f) proceeds or awards arising from a taking or condemnation of capital property;
- (g) receipts or credits for settlement of claims for loss or theft of or damage to personal property or furnishings, or any recoveries relating to a breach of warranty or guaranty, excluding, however, those amounts that are compensation for items that would otherwise be included in Total Operating Revenues hereunder;
- (h) proceeds from any insurance policy other than the net proceeds actually received by Owner of use and occupancy or business interruption insurance;
- (i) receipts of a capital nature, including any financing of the Hotel;
- (j) Existing Lease and License Arrangements;
- (k) interest, if any, earned on any FF&E Reserve or on funds invested on behalf of Owner; or
- (l) working capital provided by Owner.

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**SCHEDULE IV
Centralized Services**

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**EXHIBIT A
DESCRIPTION OF PREMISES**

**EXHIBIT B
EXAMPLE OF MONTHLY TRANSACTIONS REPORT**

For Properties
As of 6/30/2016

	Actual	%	Budget	%	Last Year	%		YTD	%	YTD Budget	%	YTD Last Year	%
SUMMARY OPERATING STATEMENT													
ROOMS AVAILABLE	3,060		0		3,060			18,564		0		18,462	
ROOMS SOLD	0		0		0			0		0		0	
OCCUPANCY	0.00%		0.00%		0.00%			0.00%		0.00%		0.00%	
ADR	0.00		0.00		0.00			0.00		0.00		0.00	
ROOMS REPAIR	0.00		0.00		0.00			0.00		0.00		0.00	
TOTAL REPAIR	0.00		0.00		0.00			0.00		0.00		0.00	
OPERATING REVENUE													
Rooms	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Food and Beverage	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Other Operated Departments	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Miscellaneous Income	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Total Operating Revenue	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
DEPARTMENTAL EXPENSES													
Rooms	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Food and Beverage	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Other Operated Departments	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Total Departmental Expenses	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
TOTAL DEPARTMENTAL PROFIT	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
UNDISTRIBUTED OPERATING EXPENSES													
Administrative and General	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Information and Telecommunications Systems	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Sales and Marketing	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Property Operation and Maintenance	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Utilities	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
Total Undistributed Expenses	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
GROSS OPERATING PROFIT	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
MANAGEMENT FEES	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%
INCOME BEFORE NON-OPERATING INCOME AND EXPENSES	0	0.00%	0	0.00%	0	0.00%		0	0.00%	0	0.00%	0	0.00%

**EXHIBIT C
COMPETITIVE SET**

STR#	Property Name	Room Count	Open Date	City	State
22182	Bayshore Resort	120	05/1994	Traverse City	MI
40962	Holiday Inn Express & Suites Acme Traverse City	81	06/2001	Williamsburg	MI
13977	Comfort Inn Traverse City	62	06/1997	Traverse City	MI
24165	Hampton Inn Traverse City	124	01/1987	Traverse City	MI
29103	Grand Beach Resort Hotel	98	05/1992	Traverse City	MI
59442	Cambria Hotels Traverse City	92	06/2009	Traverse City	MI
36111	Fairfield Inn & Suites Traverse City	85	07/1999	Traverse City	MI
10976	Cherry Tree Inn & Suites	76	11/1999	Traverse City	MI

Consent of Independent Valuation Expert

Procaccianti Hotel REIT, Inc.:

We hereby consent to the reference to our name and description of our role in the valuation process of certain real estate assets of Procaccianti Hotel REIT, Inc. (the “Company”) included in the Current Report on Form 8-K dated June 9, 2021 and any future periodic reports of the Company. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act of 1933, as amended.

/s/ Robert A. Stanger & Co., Inc.

Robert A. Stanger & Co., Inc.
Shrewsbury, New Jersey
June 9, 2021
