

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

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FILER

PROCACCIANTI HOTEL REIT, INC.

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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): July 30, 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:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
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.

Completion of Acquisition

On July 30, 2021 (the “Closing”), Procaccianti Hotel REIT, Inc. (the “Company”), through PHR Cherry PropCo, LLC (“PHR Cherry”), a wholly-owned subsidiary of Procaccianti Hotel REIT, L.P. (the “Operating Partnership”), the Company’s operating partnership, completed the acquisition of a 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”), pursuant to that certain Purchase and Sale Agreement dated as of April 28, 2021 (as assigned, the “Purchase and Sale Agreement”), by and among PHR Cherry, as the purchaser, and Pride One Cherry Tree, LLC and IPN-Pride Investment Holdings, LLC (collectively, the “Seller”). The Company’s assumption of the Purchase and Sale Agreement was described in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on June 9, 2021 (the “[June 2021 8-K](#)”), which is incorporated herein by reference.

The Company funded the acquisition of the Property with net proceeds from the Company’s public offering and a bridge loan in the amount of \$4,000,000 from an affiliate of the Procaccianti Companies, Inc. (the “Sponsor”), the sponsor of the Company (as discussed below).

In connection with Closing, on July 30, 2021, the Ground Lease by and between PHR Cherry and the Seller, dated as of June 3, 2021, which was filed as Exhibit 10.3 to the June 2021 8-K, was terminated pursuant to its terms and the Company became the fee owner of the Property. Further, on July 30, 2021, the Seller repaid in full the loan in the principal amount of \$7,689,593.65 owed to an affiliate of the Sponsor and secured by a promissory note and mortgage (collectively, the “Loan Agreement”), copies of which were filed as Exhibit 10.4 and Exhibit 10.5 to the June 2021 8-K, and the Loan Agreement was terminated.

In connection with the completed acquisition, because the Company is prohibited from operating hotels pursuant to certain tax laws relating to its qualification as a real estate investment trust under the Internal Revenue Code of 1986, as amended, the Property was leased to PHR Cherry OPCO SUB, LLC (the “Lessee”), a single purpose entity 100% owned by PHR TRS II, LLC, a taxable REIT subsidiary of the Company, pursuant to that certain Hotel Lease between PHR Cherry and the Lessee dated as of July 30, 2021 (the “Lease”).

The foregoing description of the Lease is only a summary and is qualified in its entirety by reference to the complete text of the Lease, which is attached hereto as Exhibit 10.1 and incorporated by reference herein.

In connection with the completed acquisition, the Company incurred an acquisition fee payable to the Procaccianti Hotel Advisors, LLC, the external advisor to the Company (the “Advisor”), of approximately \$263,439 or 1.5% of the Gross Contract Purchase Price (as defined in the Company’s prospectus), which will be deferred until the occurrence of a liquidation event of the Company and is subordinate to certain stockholders’ returns.

Bridge Loan

In connection with the acquisition of the Property, PHR Cherry entered into a loan arrangement (the “Loan Arrangement”) with Emerald Capital Lending III, LLC, an affiliate of the Sponsor (the “Lender”). Pursuant to the Loan Agreement, PHR Cherry borrowed approximately \$4,000,000 (the “Bridge Loan”) in order to partially fund the acquisition of the Property. The Bridge Loan is collateralized by the Property. The term of the Bridge Loan is 6 months and bears an interest of 9.00% per annum and includes a closing fee payable to the Lender in the amount of \$20,000.00. The Loan Arrangement 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 loan between unaffiliated parties under the same circumstances.

The foregoing description of the Loan Arrangement is only a summary and is qualified in its entirety by reference to the complete text of the Promissory Note and mortgage evidencing the Loan Arrangement, which are attached hereto as Exhibits 10.2 and 10.3, respectively, and incorporated by reference herein.

Item 1.02 Termination of a Material Definitive Agreement.

The information set forth in Item 1.01 with respect to the termination of the Ground Lease and the termination of the Loan Agreement is incorporated herein by reference into this Item 1.02.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth under Item 1.01 of this Current Report is incorporated herein by reference into this Item 2.01.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

To the extent required by Item 2.03 of Form 8-K, the information set forth under Item 1.01 of this Current Report is hereby incorporated by reference into this Item 2.03.

Item 8.01 Other Events.***Renewal of Advisory Agreement***

On July 29, 2021, the Board, including all independent directors of the Company, after review of the Advisor's performance during the last year, authorized the Company to execute a mutual consent to renew the Amended and Restated Advisory Agreement, by and among the Company, the Operating Partnership and the Advisor, dated August 2, 2018, as amended. The renewal will be for a one-year term and became effective on August 2, 2021.

Item 9.01 - Financial Statements and Exhibits.**(d) Exhibits.**

Exhibit No.	Description
10.1	Hotel Lease by and between PHR Cherry OPCO SUB, LLC and PHR Cherry Propco, LLC, dated as of July 30, 2021.
10.2	Promissory Note, dated as of July 30, 2021, by PHR Cherry Propco, LLC payable to Emerald Capital Lending III, LLC.
10.3	PHR Cherry Mortgage

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.

Date: August 4, 2021

PROCACCIANTI HOTEL REIT, INC.

By: /s/ Gregory Vickowski

Gregory Vickowski

Chief Financial Officer

HOTEL LEASE

between

PHR Cherry Propco, LLC, a Michigan limited liability company, as Landlord

and

PHR CHERRY OPCO SUB, LLC, a Michigan limited liability company, as Tenant

Dated as of July 30, 2021

Cherry Tree Inn Traverse City, Michigan

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AMENDED AND RESTATED HOTEL LEASE

THIS AMENDED AND RESTATED HOTEL LEASE (this “Lease”) is made and entered into as of the 30th day of July, 2021, by and between PHR Cherry Propco, LLC, a Michigan limited liability company, having its principal office at c/o Procaccianti Companies, 1140 Reservoir Avenue, Cranston, Rhode Island 02920-6320 (“Landlord”), and as Landlord and PHR CHERRY OPCO SUB, LLC, a Michigan limited liability company, a Michigan limited liability company, having its principal office at c/o Procaccianti Companies, 1140 Reservoir Avenue, Cranston, Rhode Island 02920-6320 (“Tenant”).

RECITALS

A. Landlord is the owner of the real property located at 2345 N, US-31 N, Traverse City, MI 49686 and legally described on Exhibit A attached hereto (the “Land”) and all improvements thereon, including the building that is being operated as a hotel consisting of approximately 77 guest rooms, and other facilities. The Property (as hereinafter defined) and that portion of the FF&E (as hereinafter defined) that is owned by Landlord (and not paid for herein by Tenant) are hereinafter collectively referred to as the “Leased Property”.

B. Landlord desires to lease the Leased Property to Tenant and Tenant desires to lease the Leased Property from Landlord, all on the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE I DEFINITIONS

In addition to other terms that are defined elsewhere in this Lease, the following terms shall have the meanings set forth below when used herein:

“Additional Rent” has the meaning set forth in Section 3.3.

“Affiliate” means, with respect to any Person, any other Person (a) directly or indirectly controlled by, controlling or under direct or indirect common control with the Person in question, (b) who owns, directly or indirectly, 5% or more of the equity interest of the Person in question, or (c) who is an immediate family member (e.g., a parent, spouse, sibling, child or grandchild) of the Person in question. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interest, by contract or otherwise; and the terms “controlling” and “controlled” have the meanings correlative to the foregoing.

“Assigned Items” has the meaning set forth in Section 2.1.

“Base Rent” has the meaning set forth in Section 3.1.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law.

“Commencement Date” means July 30, 2021.

“Consumer Price Index” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 as published by the United States Department of Labor, Bureau of Labor Statistics. If the Consumer Price Index shall cease to use 1982-84 as the base period, the Consumer Price Index shall be converted in accordance with the conversion factor, if any, published by the United States Department of Labor, Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised during the Term hereof such other governmental index or computation, if any, with which it is replaced shall be used. If no conversion factor is supplied by the United States Department of Labor, Bureau of Labor Statistics, either for a new base year or a new index, the parties hereto shall agree upon a replacement for the Consumer Price Index to be used.

“Cut-Off Time” means 12:01 a.m. on the Commencement Date.

“Debtor’s Law” has the meaning set forth in Section 8.6.

“Default Interest Rate” means an annual rate equal to the Prime Rate, plus five percent (5%).

“Event of Default” has the meaning set forth in Section 8.1.

“Executive Order 13224” has the meaning set forth in Section 4.15(e)(i).

“Expiration Date” has the meaning set forth in Section 2.2.

“FF&E” means the furniture, furnishings, equipment, fixtures, apparatus and other personal property used in, or held in storage for use in, the operation of the Hotel, or any replacement or substitution of such furniture, furnishings, equipment, fixtures or apparatus.

“Fixed Rent” has the meaning set forth in Section 3.1(a).

“Foreclosure Purchaser” means the holder of a Mortgage or the designee or assignee of the holder of a Mortgage in the case of a deed-in-lieu of foreclosure, or the purchaser in a foreclosure proceeding.

“GAAP” has the meaning set forth in Section 3.1(d).

“Governmental Authority” means any federal, state, county or municipal government and any appropriate department, commission, board or other authority having jurisdiction over the Hotel now or hereafter in force, including, without limitation, any alcoholic beverage control board, health inspector, the Board of Fire Underwriters, and any insurance company providing the insurance required to be carried under this Lease.

“Gross Revenue” has the meaning set forth in Section 3.1(d).

“Hazardous Materials” means any flammables, explosives, radioactive materials, hazardous wastes, hazardous and toxic substances or related materials, asbestos or any material containing asbestos, or any other substance or material included in the definition of “hazardous substances”, “hazardous wastes”, “hazard materials”, “toxic substances”, “contaminants” or any other pollutant, or otherwise regulated by any federal, state or local environmental law, ordinance, rule or regulation, including the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, and the Resource Conservation and Recovery Act, as amended, and in the regulations adopted and publications promulgated pursuant to each of the foregoing Acts.

“Hotel” means the hotel operated on the Land by Tenant, currently commonly known as the Cherry Tree Inn, Traverse City, and all improvements constructed thereon, all related FF&E, and all rights appurtenances and interests in connection therewith.

“Hotel Personalty” has the meaning set forth in Section 3.6(a).

“Land” has the meaning set forth in Recital A.

“Landlord” has the meaning set forth in the preamble.

“Law” has the meaning set forth in Section 4.8(a).

“Lease” has the meaning set forth in the preamble.

“Lease Year” means a consecutive twelve-month period, commencing on the first day of the first full month after the Commencement Date, except that the final Lease Year shall end on the Expiration Date (unless this Lease shall be sooner terminated in accordance with its terms).

“Leased Property” has the meaning set forth in Recital A.

“Licenses” has the meaning set forth in Section 4.7.

“Lien” has the meaning set forth in Section 4.10.

“Management Agreement” means that certain Management Agreement, dated as of the date hereof, between Tenant and Manager for the management and operation of the Hotel, as amended from time to time, and any substitute therefor mutually agreed to by Manager and Tenant.

“Manager” means PHR Cherry Tree Hotel Manager, LLC.

“Mortgage” means any first mortgage, deed of trust, deed to secure debt or other security instrument recorded against all or any portion of the Property for current indebtedness of Landlord and all renewals, modifications, refinancings, rearrangements,

consolidations, replacements and extensions thereof, as evidenced or deemed to be evidenced by any mortgage, deed of trust, deed to secure debt, assignment of leases or profits, security agreement or fixture filing from Landlord to a lender.

“Notices” has the meaning set forth in Section 12.5.

“OFAC” has the meaning set forth in Section 4.15(e)(i).

“OFAC Lists” has the meaning set forth in Section 4.15(e)(i).

“Officer’s Certificate” has the meaning set forth in Section 3.1(c).

“Operating Supplies” means all supplies, except for FF&E and kitchen, restaurant and bar equipment, used or held in storage for future use in connection with operation of the Hotel in accordance with the Operational Standards, including, without limitation, all engineering, maintenance and housekeeping supplies, guest room cleaning supplies, soap and other toiletries, toilet paper, stationery, writing pens, office supplies, and food and beverages of all kinds.

“Operational Standards” means the operating standards required for the Hotel to be operated as a first-class, hotel staffed and equipped and having inventories comparable to other similar first-class hotels in comparable metropolitan areas in the United States.

“Parking Contracts” means any agreements providing for vehicle parking (valet or otherwise) rights associated with the guests, invitees or employees of the Hotel.

“Percentage Rent” has the meaning set forth in Section 3.1(b).

“Person” means any individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

“Personal Property Limitation” has the meaning set forth in Section 3.6(a).

“Persons Within Tenant’s Control” means all of Tenant’s subtenants and assignees, and all of their respective principals, officers, agents, contractors, servants, employees, licensees, guests and invitees.

“Prime Rate” means the prime rate of interest published from time to time (and as the same may be changed from time to time) in the Money Rates section of The Wall Street Journal, or its successor publication, from time to time.

“Property” means the Land and the Hotel, in whole or in part, and all improvements, FF&E, appurtenances, rights and interests relating thereto.

“Proposed Party” has the meaning set forth in Section 10.2.

“Renewal Term” has the meaning set forth in Section 2.2.

“Rent” means Base Rent, Additional Rent, Percentage Rent and any other sum payable from Tenant to Landlord pursuant to this Lease.

“Required Improvements” has the meaning set forth in Section 4.13(b).

“Sale Termination Event” has the meaning set forth in Section 2.3.

“Service Contracts” has the meaning set forth in Section 4.6(a).

“Tenant” has the meaning set forth in the preamble.

“Tenant’s Representative” has the meaning set forth in Section 8.6.

“Term” has the meaning set forth in Section 2.2.

“Unrecovered Costs” has the meaning set forth in Section 2.3.

The terms “herein,” “hereof,” “hereunder” and like terms, unless otherwise specified, shall be deemed to refer to this Lease in its entirety and shall not be limited to any particular section or provision hereof. The terms “include” and “including” as used herein shall be deemed to mean “including, but not limited to.” References herein to “Sections,” and “Exhibits” shall be deemed to respectively mean sections of and exhibits to this Lease unless otherwise specified.

ARTICLE 2 DEMISE AND TERM

2.1 Demise. Upon the terms and conditions hereinafter set forth and in consideration of the payment from time to time by Tenant of the Rent and the prompt performance by Tenant and Landlord of each and every one of the respective covenants and agreements hereinafter contained to be kept and performed by Tenant and Landlord, the performance of each and every one of which is declared to be an integral part of the consideration to be furnished respectively by Tenant and Landlord, (i) Landlord does hereby lease, let and demise unto Tenant, and Tenant does hereby lease of and from Landlord, for the Term, at the Rent and upon all of the other provisions of this Lease, the Leased Property together with any and all improvements now or hereafter erected or installed thereon relating to the Leased Property and all present or future appurtenances, rights, service contracts, equipment leases, privileges, licenses and easements benefiting, belonging or pertaining thereto; and (ii) effective as of the Commencement Date, Landlord does hereby assign to Tenant and Tenant does hereby assume from Landlord, for the Term, all of Landlord’s right, title and interest in and to, and all of Landlord’s obligations under, the Parking Contracts, the Service Contracts, the Licenses, the hotel reservations and any proprietary rights, records, documents and intangible property required in the ordinary course of business in operating the Hotel (collectively, the “Assigned Items”).

2.2 Term. The term of this Lease (the “Term”) shall commence on the Commencement Date and shall continue until the fifth (5th) anniversary of the first full month of this Lease, or such earlier date upon which this Lease is sooner terminated in accordance with its terms (the “Expiration Date”). Provided that no Event of Default shall have occurred and be continuing, this Lease shall automatically extend for three (3) renewal terms of five (5) years each (each a “Renewal Term”) unless Tenant elects, by providing notice to Landlord no later than 12 months prior to then next scheduled expiration of the Term or Renewal Term of this Agreement to terminate this Agreement upon the expiration of the then current Term or Renewal Term. Base Rent and Percentage Rent shall be renegotiated by Landlord and Tenant prior to the commencement of each Renewal Term at rental rates with shall be “market rent” (meaning such rent which a willing tenant would pay a willing landlord to lease the Leased Property taking into account the terms and conditions of this Lease and permitting compliance with Sections 3.6 and 3.7 hereof) which shall be evidenced by a transfer pricing report prepared by an independent national accounting firm. All of the terms, covenants and provisions of this Agreement shall apply to each Renewal Term. Tenant shall have no right to extend the Term beyond the expiration of third Renewal Term. If Tenant does not give notice that it elects to terminate this Agreement in accordance with this Section 2.2, this Lease shall automatically renew at the end of the Term or Renewal Term then in effect as provided in the this Section 2.2.

2.3 Termination Upon Sale by Landlord. Notwithstanding anything to the contrary contained herein, the Term shall automatically expire and this Lease shall automatically terminate immediately upon completion of a sale by Landlord of Landlord’s interest in all or substantially all of the Leased Property. In such event (a “Sale Termination Event”), Landlord shall pay to Tenant (i) a termination payment equal to the greater of (y) the present value of a series of monthly payments for the number of months remaining in the Term of this Lease, which payments shall equal 1.75% of the monthly average gross receipts generated by the Leased Property during the preceding portion of the Term discounted at an annual rate of 15%; and (z) Tenant’s Unrecovered Costs, plus an amount that would provide Tenant with an overall 10% internal rate of return on its invested capital; and (ii) a portion (measured as a percentage)

of any reserve established for the maintenance and replenishment of the FF&E shall be distributed to Tenant which portion shall equal the percentage of the FF&E reserve equal to the percentage of FF&E (measured in the aggregate) owned by Tenant at the time of such Sale Termination Event, versus the percentage of FF&E owned by Landlord at the time of such Sale Termination Event (measured in the aggregate). Landlord and Tenant agree to execute whatever quitclaims or other documentation is reasonably required to evidence any such Sale Termination Event. “Unrecovered Costs” are defined as the excess, if any, of Tenant’s cumulative cash expenditures (including Rent pursuant to the terms and conditions of this Lease and excluding Tenant’s interest expense) over the cumulative gross receipts generated by the Leased Property.

2.4 Effect of Termination. Upon any termination of this Lease, Tenant shall pay to Landlord any Rent due and payable as of the date of such termination.

ARTICLE 3 RENT

3.1 Rent. Tenant agrees to pay for use of the Leased Property during each Lease Year (or partial Lease Year, if applicable with respect to the first and last Lease Year), the rent (the “Base Rent”) equal to the sum of Fixed Rent and Percentage Rent, as each are calculated in accordance Schedule 3.1 attached hereto and made a part hereof.

- (a) “Fixed Rent” shall have the meaning contained in Schedule 3.1.
- (b) “Percentage Rent” shall have the meaning contained in Schedule 3.1.

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(c) Tenant shall pay an amount equal to the Fixed Rent on the first (1st) day of each calendar month during the Term (including the calendar month next succeeding the last month of the term hereof). Percentage Rent for each Lease Year shall be payable quarterly in arrears on the 15th day following the end of each calendar quarter based upon a written statement, signed and certified by an officer of Tenant (an “Officer’s Certificate”) to be true and correct, setting forth the total amount of Tenant’s Gross Revenue made during the immediately preceding calendar quarter. In the event the Term begins and/or ends in the middle of a Lease Year, then to calculate Percentage Rent for the applicable partial Lease Year, the dollar thresholds set forth in Sections 3.1(b)(i) through (v) above shall be multiplied by a fraction equal to (i) the number of days in such Lease Year that fall within the Term divided by (ii) 365. If the annual Percentage Rent due and payable for any Lease Year (as shown in the applicable Officer’s Certificate) exceeds the amount actually paid as Percentage Rent by Tenant for such year, Tenant also shall pay such excess to Landlord at the time such Officer’s Certificate is delivered. If the Percentage Rent actually due and payable for such Lease Year is shown by such Officer’s Certificate to be less than the amount actually paid as Percentage Rent for the applicable Lease Year, Landlord shall reimburse such amount to Tenant or alternatively, at the Landlord’s option, credit such amount against subsequent months’ Base Rent.

(d) With respect to any applicable time period, “Gross Revenue” means all revenues and income of any kind derived from the use of rooms at the Hotel, including, without limitation, revenue derived from rooms and suites rented or leased for part of a day, a week, a month or longer, and all revenues and income of any kind derived from the sale of all food, liquor, soft drinks or other beverages at the Hotel, including mini-bars, and the sale, rental or use of kitchen facilities and services, conference facilities and services, meeting rooms, miscellaneous banquet income and service charges or audio/video equipment, and all revenues and income of any kind derived from minor operating departments income from the operations of the Hotel. Notwithstanding anything to the contrary contained herein, revenue from guests who guaranteed their arrival but did not “show”, shall be included in Gross Revenue when collection is reasonably assured. The calculation of all types of revenue shall be determined on the accrual method of accounting in accordance with generally accepted accounting principles consistently applied (“GAAP”) and shall include sales made on a cash basis or on credit, but shall exclude the following items:

- (i) Federal, state and municipal excise taxes and sales taxes paid by customers in connection with goods, merchandise or services purchased by them to the extent that such taxes are separately levied, whether or not itemized on the customer’s bill or checks; and
- (ii) Service charges or tips paid directly to employees if not separately itemized or if not included in package prices on the customer’s bill or checks; and

- (iii) All applicable room, excise, sales and use taxes or similar government charges collected directly from guests of the Hotel; and
 - (iv) Revenues from the sale or financing of all or any part of the Leased Property, the operating inventory, or surplus items; and
 - (v) Except for proceeds under any business interruption policies, any insurance or condemnation proceeds related to the Leased Property.
- (e) Landlord and Tenant hereby agree to allocate fairly (based on relative value) the Base Rent payments between the lease of the Hotel, on the one hand, and the lease of the Hotel Personalty, on the other hand.

3.2 Apportionments. In the event that Tenant receives any income or incurs any expenses attributable to the period prior to the Cut-Off Time, Tenant shall assign such items of income and expense to the designee of Landlord, and Landlord's designee shall retain all such income and pay all such expenses attributable to this period. In the event that Landlord receives any income (or a credit therefor in connection with Landlord's purchase of the Leased Property) or incurs any expense attributable to the period following the Cut-Off Time, and Tenant would have been entitled to such income or responsible for such expense had such income or expense been received or incurred directly by Tenant, Landlord shall assign such items of income and expense to Tenant, and Tenant shall retain such income and pay all such expense attributable to this period.

3.3 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 Base Rent shall constitute "Additional Rent".

3.4 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 a rate equal to eighteen percent (18%) per annum, compounded monthly, but in no event in excess of the maximum rate permitted by applicable law.

3.5 Intentionally Omitted.

3.6 Personal Property Limitation.

(a) Anything contained in this Lease to the contrary notwithstanding, the amount of Hotel Personalty subject to this Lease shall be limited so that the rents attributed to Hotel Personalty shall not exceed fifteen percent (15%) of the total rents from all property demised under this Lease determined at the time that the Hotel Personalty is placed in service (the "Personal Property Limitation"). "Hotel Personalty" is defined to include, without limitation, all property related to the Hotel that is not "real property" within the meaning of Treas. Reg. Section 1.856-10. Landlord and Tenant shall at all times cooperate in good faith and use their best efforts to permit Landlord to comply with the Personal Property Limitation, which compliance may include, without limitation, the purchase by Tenant at fair market value of personal property used in the operation of the Hotel sufficient to permit compliance with the Personal Property Limitation set forth in this Section 3.6. All such compliance shall be effected in a manner that has no material net economic detriment to Tenant. This Section 3.6 is intended to ensure that the rents from personal property fall below the fifteen percent (15%) limitation of Section 856(d)(1) of the Code and shall be interpreted in a manner consistent with such intent.

(b) If and to the extent the ownership of any portion of the Hotel Personalty would cause the Base Rent not to qualify as "rents from real property" for purposes of Section 856(d)(1) of the Code, or if deemed appropriate or desirable by Landlord, Tenant agrees that, upon request of Landlord, Tenant will acquire such of the Hotel Personalty at its fair market value as Landlord shall reasonably specify, and Landlord and Tenant agree to adjust the Base Rent (including any revenue breakpoints set forth in the Percentage Rent) to appropriately reflect such acquisition, and Landlord and Tenant agree to amend this Lease accordingly.

3.7 Sublease Rent Limitation. Anything contained in this Lease to the contrary notwithstanding, Tenant shall not sublet the Hotel or enter into any similar arrangement on any basis such that the rental or other amounts to be paid by the sublessee thereunder would be based, in whole or in part, on either (a) the net income or profits derived by the business activities of the sublessee, or (b) any other formula such that any portion of the Rent would fail to qualify as “rents from real property” within the meaning of Section 856(d)(1) of the Code, or any similar or successor provision thereto.

3.8 No Commingling of Funds. Tenant shall not commingle monies received and held by Tenant from the possession and operation of the Leased Property with any other funds of Tenant or of any other Person.

3.9 Manager; Management.

(a) Pursuant to the Management Agreement, Manager has agreed to manage the Leased Property on the terms and conditions contained therein. Tenant shall (i) at all times comply with the terms and conditions contained in the Management Agreement, (ii) do all things necessary to preserve and keep unimpaired its material rights under the Management Agreement and (iii) notify Landlord in writing of any default, alleged default, or event which with notice or the passage of time would constitute a default under the Management Agreement, which default or event shall be and constitute a default hereunder.

(b) Tenant hereby covenants and agrees to promptly enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by Manager under the Management Agreement and all of its rights and remedies under the Management Agreement against Manager.

(c) Tenant hereby covenants and agrees not to do any of the following without the prior written consent of Landlord: (i) surrender, terminate or cancel the Management Agreement, (ii) reduce or consent to the reduction of the term of the Management Agreement, (iii) increase or consent to the increase of the amount of any charges under the Management Agreement, or (iv) otherwise modify, change, supplement, alter or amend in any material adverse respect any of the provisions of the Management Agreement or any of Tenant’s rights and remedies under the Management Agreement.

(d) If Tenant receives any notice of or becomes aware of a violation or circumstances likely to result in a violation of the Management Agreement, Tenant shall promptly deliver to Landlord written notice of such violation or circumstances and, to the extent the same is the responsibility of Tenant under this Lease, take all remedial action necessary for compliance with the Management Agreement; provided that Tenant may contest any such violation if Landlord consents to such contest by Tenant, which consent shall not be unreasonably withheld. If Tenant contests such violation, Tenant shall hold Landlord harmless from any loss, cost, damage or expense, including reasonable attorneys’ fees, resulting from such contest, unless the contested violation resulted from an intentional act or omission in contravention of this Lease by Landlord, its agents or employees.

(e) Tenant shall deliver to Landlord, within three (3) days after receipt of same by Tenant, copies of all written notices sent to Tenant by Manager relating to the Management Agreement.

(f) Landlord and Tenant agree to cooperate fully with each other in the event it becomes necessary to obtain an extension or modification of the Management Agreement or a new management agreement for the Leased Property.

(g) Tenant shall ensure that the Management Agreement (or any successor management agreement) obligates the Manager to provide information Landlord deems reasonably necessary to ensure that the Manager is an “eligible independent contractor” as such term is defined in Section 856(d)(9)(A) of the Code.

3.10 Books and Records. In addition to any other requirements set forth herein (including, without limitation, Sections 4.3(a) and 5.1), Tenant covenants that, for the purposes of ascertaining the amount payable to Landlord as Percentage Rent, Tenant shall keep books of account and other records in which full, true and correct entries will be made of all financial dealings and actions in relation to the business and affairs of the Hotel in accordance with generally accepted accounting principles, consistently applied, and will preserve such records and books of account throughout the Term. All such books and records shall be maintained at the Leased Property or the principal business office of Tenant or Manager during the Term and, upon the Expiration Date, shall be delivered to Landlord, subject to Tenant’s continuing right to review such books and records and to make copies or extracts of the same. Landlord shall keep such books and records for five (5) years after the expiration or earlier termination of this Lease. Landlord shall have access to

such books and records during regular business hours during the Term and shall have the right, at its expense, to make copies or extracts thereof.

3.11 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 Leased Property 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 Leased Property, 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.

3.12 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.

3.13 Place Where Rent Paid. All Rent shall be payable to Landlord at the place provided in this Lease for the sending of notices to Landlord, or at such other place as Landlord may specify by notice to Tenant from time to time. A place once specified as the place for the payment of Rent shall continue until changed by notice by Landlord to Tenant.

3.14 Omitted

ARTICLE 4 USE

4.1 General Operating Covenants. During the Term, Tenant shall continuously use and occupy the Hotel as a hotel which meets or exceeds the Operational Standards. Tenant shall operate the Hotel under the name "Cherry Tree Inn," or such other name as Landlord may approve from time to time, and shall maintain the Hotel in compliance with all applicable Laws, the Operational Standards and all Mortgages. 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 use reasonable good faith efforts to promote the maximum possible amount of trade, commerce and business for the Hotel. Tenant shall not hold itself out as the agent of Landlord. Upon written request from Tenant, which request shall not be delivered more frequently than quarterly, Landlord shall perform an inspection of the Leased Property, and, promptly following such inspection, confirm that Tenant is in compliance with this Section 4.1, or, if Tenant is not in compliance with this Section 4.1, specify any violations of this Section 4.1.

4.2 Prohibited Uses. Tenant will not knowingly make or permit to be made any use of the Hotel or any part thereof that would violate any of the covenants, terms, provisions and conditions of this Lease or any Mortgage, or that directly or indirectly is forbidden by applicable Laws or that may be dangerous to life, limb or property or that may invalidate or materially increase the premium cost of any policy of insurance carried on the Leased Property or covering the operation of the Leased Property or the Hotel. Tenant shall not, and shall not knowingly permit anyone else to, bring into, use, store or dispose of on the Leased Property any materials or substances in violation of any applicable Laws. Tenant will not, and will not knowingly suffer or permit the Leased Property or any part thereof to be used in any manner or permit anything to be brought into or kept therein that would in any way materially impair or tend to materially impair the character, reputation or appearance of the Hotel or that would materially impair or interfere with or tend to materially impair or interfere with any of the services performed by Landlord for the Hotel or that could threaten the safety of the Hotel or any of its occupants. Tenant will not, and will not knowingly suffer or permit the Leased Property or any part thereof to be used in any

manner to conduct wagering activities by any person who is engaged in the business of accepting wagers and who is otherwise legally authorized to engage in such business.

4.3 Records.

(a) In addition to any other requirements set forth herein (including, without limitation, Sections 3.10 and 5.1), Tenant shall maintain complete books and records for the Hotel, including the books of account, guest records, front office records and general records of the Hotel.

(b) Tenant shall prepare and file all forms, reports and returns for the Hotel required by all federal, state or local laws in connection with unemployment insurance, worker's compensation insurance, disability benefits, income tax withholding, and social security. Tenant shall prepare for review, approval and, where appropriate, auditing by Landlord's independent accounting firm, all financial statements with respect to the operation of the Hotel.

4.4 Guests. Tenant shall maintain business-like relations with guests of the Hotel. Tenant shall collect with diligence the rents and other income due from guests and concessionaires and use reasonable good faith efforts to enforce compliance with all terms of overnight occupancy rights.

4.5 Advertising and Promotion. Tenant shall arrange, contract and pay for all advertising and promotion that Tenant deems necessary for the successful operation of the Hotel in order to meet or exceed the Operational Standards.

4.6 Services and Purchases.

(a) Tenant shall enter into, perform its obligations under, administer, pay and use reasonable good faith efforts to enforce service contracts required in the ordinary course of business in operating the Hotel, including contracts for water, electricity, gas, telephone, refuse removal, vermin extermination, snow removal, cable, Internet, cleaning, laundry, pool service, vending services, fire systems inspection and testing, elevator and boiler maintenance, and all other services (collectively, "Service Contracts") that are provided in comparable hotels.

(b) Tenant shall take reasonable measures, as directed by Landlord and as are consistent with the provisions of this Lease, to provide for security in the Hotel.

(c) Tenant shall make all payments on or before the applicable due dates required to maintain the insurance regarding the Hotel that Tenant is required to carry under Article 7.

4.7 Permits. To the extent not required to be provided by Landlord, Tenant shall apply for, obtain and maintain (or shall require Manager to apply for, obtain and maintain) for the benefit of the Hotel 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 cooperate to the fullest extent with Tenant in applying for, obtaining and maintaining such Licenses. Tenant shall assign (or cause Manager to assign) all such Licenses for the Hotel to Landlord or its designee upon termination of this Lease (to the extent assignable).

4.8 Compliance with Law and Mortgages.

(a) Subject to Section 4.8(c) below, Tenant shall comply with and abide by all applicable statutes, laws, rules, regulations, requirements, orders, notices, determinations and ordinances of any Governmental Authority (all of the foregoing hereinafter referred to collectively as "Laws"), and with the terms and provisions of any Mortgage, to the extent performance of such terms and provisions are within the control of Tenant under this Lease.

(b) Subject to Section 4.8(c) below, if Tenant receives notice of or becomes aware of a violation or circumstances likely to result in a violation of any Law or any Mortgage, Tenant shall promptly deliver to Landlord and the holder of such Mortgage written notice of such violation or circumstances and, to the extent the same is the responsibility of Tenant under this Lease, take all remedial action necessary for compliance with the Law and any Mortgage; provided that Tenant may contest any such violation if Landlord consents to such contest by Tenant, which consent shall not be unreasonably withheld. If Tenant contests such violation, Tenant shall hold Landlord harmless from any loss, cost, damage or expense, including, reasonable attorneys' fees, resulting from such contest, unless the contested violation resulted from an intentional act or omission in contravention of this Lease by Landlord, its agents or employees. Upon written request from Tenant, which request shall not be delivered more frequently than quarterly, Landlord shall perform an inspection of the Leased Property, and, promptly following such inspection, confirm that there is no violation or circumstances likely to result in a violation of any Law or any Mortgage, or, if such a violation or circumstance shall exist, specify any such violation or circumstance.

(c) Notwithstanding the foregoing provisions of this Section 4.8, Landlord shall be solely responsible for all cost and expense arising from the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, surface water or ground water, or any portion thereof, at, on, about, under or within the Leased Property, including any costs of investigation or remediation, whether prior to or subsequent to the Commencement Date; provided, however, that Tenant shall be solely responsible for all cost and expense arising from the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, surface water or ground water, or any portion thereof, at, on, about, under or within the Leased Property, including any costs of investigation or remediation, if and to the extent caused by the intentional act or willful misconduct of Tenant.

4.9 Payment of Taxes.

(a) Tenant shall pay all taxes (including, without limitation, all ad valorem, sales and use, single business, gross receipts, transaction, privilege, imposition, rent or similar taxes as the same relate to or are imposed upon Tenant or the business conducted upon the Leased Property) not included in Section 4.9(b) below, water, sewer or other rents and charges, excises, tax levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees) and all other governmental charges not included in Section 4.9(b) below, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character in respect of the Leased Property or the business conducted thereon by Tenant (including all interest and penalties thereon due to any failure in payment by Tenant), which at any time during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon (i) Landlord's interest in the Leased Property; (ii) the Leased Property, any part thereof, any rent therefrom, or any estate, right, title, or interest therein; or (iii) any occupancy, operation, use or possession of, or sales from, or activity conducted on or in connection with the Leased Property or the leasing or use of the Leased Property or any part thereof by Tenant, including, without limitation, (A) all social security taxes, unemployment insurance taxes, withholding taxes and similar taxes and assessments of any nature imposed on Tenant in connection with any employees or personnel of Tenant; (B) all hotel taxes, gross receipts taxes, amusement taxes, excise taxes, sales or use taxes, rent taxes or similar taxes as the same relate to or are imposed upon Tenant or the business conducted upon the Leased Property (excluding the income of any sublessees, licensees or concessionaires of Tenant, but including the rent or other amounts received by Tenant under any such subleases, licenses or concession agreements); and (C) all personal property taxes or similar taxes or assessments with respect to any period during the Term, it being agreed that any personal property taxes payable in part with respect to the Term and in part with respect to periods before or after the Term shall be prorated between Landlord and Tenant based on the number of days of the period for which such personal property tax is payable that fall within the Term and that fall outside of the Term.

(b) Landlord shall pay all real property or similar taxes or assessments, whether special or general, of any nature whatsoever assessed against the Leased Property, with respect to any period before, during or after the Term, but the foregoing shall not include any sales, use, gross receipts, occupancy, single business, transaction, privilege, imposition, rent, ad valorem or other tax not specifically enumerated herein.

4.10 Removal of Liens. Except as contemplated under any mortgage loan associated with the Leased Property, Tenant shall at all times keep the Leased Property 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"), except for taxes that are then due and payable and that, if not then paid, would be delinquent. In the event a Lien is asserted against the Leased Property or any part thereof, Tenant shall immediately give Landlord written notice thereof and shall, to the extent that the Lien would be the responsibility of

Tenant hereunder, within twenty (20) 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 20-day period that Landlord wishes to contest such Lien or permit Tenant to contest such Lien. Landlord shall retain all right to contest and control all matters involving real property tax assessments and valuations regarding the Property. Tenant shall promptly notify Landlord of any notice received by it regarding such matters.

4.11 Utilities. Tenant shall be solely responsible for, and shall promptly pay directly to the utility or service provider the cost (including connection and other charges), of all heat, air conditioning, water, gas, electrical, light, power, sewer charges, telephone service, and other services and utilities supplied to the Leased Property, together with any taxes thereof. Landlord shall reasonably cooperate with Tenant in connection with any energy conservation program, provided that the same shall be accomplished without Landlord being required to incur any out-of-pocket cost or expense thereby. If such cooperation by Landlord shall result in any out-of-pocket cost or expense to Landlord (including reasonable attorneys' fees and disbursements), Tenant shall nonetheless have the right to require Landlord's cooperation in connection therewith, provided that Tenant shall reimburse Landlord for such out-of-pocket costs or expenses, as Additional Rent, within thirty (30) days after demand therefor.

4.12 Notice to Landlord. Tenant shall promptly notify Landlord in writing:

(a) if, to the actual knowledge of Tenant, the condition of the Hotel or any part thereof fails to meet any Law or the standards imposed hereunder;

(b) upon receipt by Tenant of any notice, demand or similar communication with respect to the violation of (i) any Law, or (ii) the obligation of Landlord under any Mortgage;

(c) 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 Hotel, or any portion thereof;

(d) 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 Leased Property; and

(e) upon receipt by Tenant of any notice or communication of any nature, written or oral, that, in the reasonable opinion of Tenant, may have a material adverse effect on the Hotel.

4.13 Omitted.

4.14 Representations, Warranties and Covenants of Landlord. Landlord hereby represents, warrants and covenants to Tenant that as of the Commencement Date:

(a) Organization; Binding and Enforceable. Landlord is a duly organized limited liability company validly existing under the laws of the State of Delaware. Landlord has full power and authority to perform its obligations under this Lease, and this Lease is the legal, valid and binding obligation of Landlord and is enforceable against Landlord in accordance with its terms.

(b) No Conflicts; Consents Obtained. The execution and delivery of this Lease does not violate or conflict with the formation document or the operating document of Landlord or any agreement, judgment, license, permit, order or other document applicable to or binding upon Landlord. Landlord has obtained all consents and approvals required by any third party with respect to Landlord in connection with the execution and delivery of this Lease.

4.15 Representations and Warranties of Tenant. Tenant hereby represents and warrants to Landlord that as of the Commencement Date:

(a) Organization; Binding and Enforceable. Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Tenant has full power and authority to perform its obligations under this Lease, and this Lease is the legal, valid and binding obligation of Tenant, and enforceable against Tenant in accordance with its terms.

(b) No Conflicts; Consents Obtained. The execution and delivery of this Lease does not violate or conflict with the formation document or the operating document of Tenant or any agreement, judgment, license, permit, order or other document applicable to or binding upon Tenant. Tenant has obtained all consents and approvals required by any third party with respect to Tenant in connection with the execution and delivery of this Lease.

(c) Management Agreement. (i) The Management Agreement is in full force and effect, (ii) there is no material uncured default, breach or violation existing thereunder by either party thereto, and (iii) to Tenant's knowledge, no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a material default, breach or violation by either party thereunder.

(d) Omitted.

(e) OFAC Lists.

(i) Neither Tenant, nor any member of Tenant, nor, to Tenant's knowledge, any Person with actual authority to direct the actions of any member of Tenant, nor, to Tenant's present, actual knowledge, any other Persons holding any legal or beneficial interest whatsoever in Tenant, (A) are named on any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism ("Executive Order 13224"), as in effect on the date hereof, or any similar list known to Tenant or publicly issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists"), (b) are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of the Persons referred to or described in the OFAC Lists; or (c) has knowingly conducted business with or knowingly engaged in any transaction with any Person named on any of the OFAC Lists or any Person included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or, to Tenant's present, actual knowledge otherwise associated with any of the Persons referred to or described in the OFAC Lists.

(ii) Neither Tenant, nor any Persons holding any legal or beneficial interest whatsoever in Tenant (whether directly or indirectly), will conduct business with or engage in any transaction with any Person named on any of the OFAC Lists or any Person included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the Persons referred to or described in the OFAC Lists.

(iii) Tenant shall comply at all times with the requirements of Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56; the Iraqi Sanctions Act, Pub. L. 101-513, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 and any similar laws are regulation currently in force or hereafter enacted.

4.16 Mutual Representations, Warranties and Covenants of Landlord and Tenant.

(a) Single Purpose Entities. Except as otherwise permitted by this Lease, each of Landlord and Tenant hereby represents and warrants that it has been organized as a single purpose entity, solely for the purpose of entering into this Lease and the other agreements contemplated hereby and performing the obligations required hereunder and under the other agreements contemplated hereby. Each of Landlord and Tenant covenants that as of the date hereof and through the Term it will comply with the special purpose entity covenants contained in the loan documents related to any Mortgage by the Landlord.

(b) No Discrimination. Each of Landlord and Tenant covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use or enjoyment of the Property herein leased, nor shall the Lease itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees of the Property herein leased.

4.17 “As Is” Leased Property. Tenant agrees to accept the Leased Property on the Commencement Date “AS IS” in the condition existing on the date hereof, subject to the provisions of Section 6.3 below. Landlord shall have no obligation to do any work in order to make the Leased Property suitable and ready for occupancy and use by Tenant. Landlord shall deliver actual possession of the Leased Property to Tenant in such condition on the Commencement Date. Tenant agrees that, except as expressly provided herein, (a) Tenant enters into this Lease without any representations, warranties or promises, express or implied, by Landlord, its agents, representatives, employees, servants or any other person in respect of the Leased Property, and (b) no rights, easements or licenses are acquired by Tenant by implication or otherwise.

4.18 Third Party Manager. Tenant shall have the right to cause Manager to perform all obligations of Tenant to be performed under this Lease, provided that Tenant shall remain liable to Landlord for the performance of all such obligations, notwithstanding any liability of Manager to Tenant.

ARTICLE 5 FINANCIAL STATEMENTS; TRANSACTIONS WITH AFFILIATES

5.1 Financial Statements to be Provided by Tenant. In addition to any other requirements set forth herein (including, without limitation, Sections 3.10 and 4.3(a)), Tenant shall maintain accurate and complete books of account and records showing the assets and liabilities, operations, transactions and financial condition of Tenant and the Property on an accrual basis in accordance with GAAP. The books of account and records of Tenant and the Property shall at all times be maintained at the principal business office of Tenant or Manager. All such books of account and records may be inspected, copied and audited by Landlord or any of its members or their designees or representatives from time to time and upon reasonable prior notice at the office of Tenant or Manager. Tenant shall, as and when received (or required to be received), furnish to Landlord copies of the financial statements and reports furnished (or required to be furnished) by Manager to Tenant pursuant to the terms of the Management Agreement. In addition, if not furnished pursuant to the immediately preceding sentence, Tenant shall furnish to Landlord, as and when required pursuant to the terms of any Mortgage, any and all operating statements, financial statements, balance sheets, budgets and reports regarding the Leased Property, including the Hotel, that shall be required under such Mortgage.

5.2 Transactions with Affiliates. In Tenant’s management and operation of the Hotel, Tenant may not purchase goods, supplies or services from or through any of its Affiliates, except with the prior written consent of Landlord, which consent shall not be unreasonably withheld.

ARTICLE 6 MAINTENANCE, REPAIRS AND ALTERATIONS

6.1 Maintenance and Repairs. Subject to Landlord’s performance of its obligations under this Lease with respect to the condition of the Leased Property (including, without limitation, with respect to the Required Improvements), Tenant shall keep and maintain the Leased Property, the heating, air conditioning, ventilating, plumbing, mechanical, electrical, telephone, elevator, escalator, life and safety and security systems, floor and wall coverings in good order, repair and condition, including making and paying for necessary replacements, additions and substitutions in order to maintain the Hotel in compliance with any Mortgage, the Operational Standards, and all applicable Laws; provided, however, that Landlord shall have the right to (i) participate in meetings with Tenant’s contractors performing any such repairs, replacements, additions and substitutions and (ii) require that any such repairs, replacements, additions and substitutions be supervised by Landlord.

6.2 Alterations. Except for Tenant’s obligations hereunder to renew and replace (which may, without Landlord’s consent, be made with the same, similar, or better materials and workmanship), Tenant shall not have any right to make any alterations,

changes, additions or improvements to the Hotel or the FF&E, if and to the extent such FF&E is owned by Landlord, without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Any work that Tenant may perform in the Hotel that is done with Landlord's consent, if given, may be conditioned on (i) Landlord's approval of Tenant's plans therefor, (ii) Landlord's participation in meetings with Tenant's contractors performing any such alterations, changes, additions or improvements, (iii) Landlord's supervision of the performance of any such alterations, changes, additions or improvements, and (iv) compliance by Tenant with such terms and conditions as Landlord may reasonably impose or as are required to maintain the quality of the improvements on the Land in accordance with the Operational Standards, or any Mortgage. All alterations, additions, and improvements in, on, or to the Hotel made or installed by Tenant, including carpeting and wall covering, shall be and become a part of the realty and owned by Landlord without compensation to Tenant.

6.3 Capital Expenditures. Landlord shall be responsible for any capital expenditure (determined in accordance with GAAP) necessary to operate and maintain the Leased Property in accordance with the Operational Standards.

ARTICLE 7 LIABILITY CLAIMS AND INSURANCE

7.1 Waiver of Claims. To the extent permitted pursuant to applicable Laws, Tenant agrees that Landlord, its Affiliates, and each of their respective shareholders, directors, partners, members, officers, employees and agents, shall not be liable to Tenant, and Tenant hereby releases said parties from any liability, for any personal injury to Tenant's employees, invitees, guests or licensees, for loss of income or damage to or loss of persons or personal property in or about the Hotel from any cause whatsoever except to the extent that such damage or loss of income is attributable to the gross negligence, willful misconduct or fraud of Landlord. To the extent permitted pursuant to applicable Laws, Landlord agrees that Tenant, its Affiliates and each of their respective shareholders, directors, partners, members, officers, employees and agents shall not be liable to Landlord, and Landlord hereby releases said parties from any liability for any personal injury to Landlord's employees, invitees, guests or licensees, for loss of income or damage or loss of income of persons or property in or about the Hotel from any cause whatsoever except to the extent that such damage or loss is attributable to the gross negligence, willful misconduct or fraud of Tenant.

7.2 Liability Insurance. Tenant will secure and maintain broad form commercial general liability insurance (including innkeeper's legal liability insurance and dram shop insurance, if applicable) designating Landlord, Manager, and Tenant as named insureds and the holder of each Mortgage as additional insureds, from financially responsible insurance companies, covering the Hotel in forms and with limits that are in compliance with the Management Agreement and each Mortgage and which are reasonable and appropriate based on the Operational Standards. The companies issuing such policies and the form and coverage of such policies shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld. Tenant shall cause Manager to maintain workers' compensation insurance and employer's liability insurance in forms and amounts required by law. Tenant shall supply Landlord with certificates of insurance for all the above-described policies of insurance. Such certificates shall provide that Tenant's insurance may not be terminated, canceled or amended except upon thirty (30) days' prior written notice to Landlord.

7.3 Property Insurance. Subject to the terms of Section 7.7 below, Landlord shall obtain and keep in full force and effect "all risk" property insurance on the Hotel, including all FF&E owned by Landlord, in compliance with each Mortgage, for the full replacement cost thereof, excluding deductibles. Tenant shall insure all FF&E owned by Tenant, in compliance with each Mortgage, for the full replacement cost thereof, excluding deductibles. Landlord shall supply Tenant, and Tenant shall supply Landlord, with certificates of insurance for all the above-described policies of insurance and each shall name Landlord, Manager, and Tenant as named insured parties. In addition, each policy maintained by Landlord under this Section 7.3 shall name the holder of each Mortgage as loss payee. 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. Tenant hereby waives any claims against Landlord for any loss or damage to the Leased Property as a result of fire or other casualty covered by insurance (unless such loss or damage is a direct result of Landlord's negligence, willful misconduct or fraud).

7.4 Business Interruption Coverage.

(a) Subject to the terms of Section 7.7 below, Landlord 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 7.3 above, including one hundred eighty (180) days subsequent to completion of any required repairs or replacements necessary to return the Leased Property to a condition at least as good as the condition prior to the interruption event and sufficient to satisfy the requirements of any Mortgage and the Operational Standards. The insurance described in this Section 7.4(a) shall name Landlord as named insured party and each mortgagee under any Mortgage as loss payee.

(b) Subject to the terms of Section 7.7 below, Tenant shall obtain coverage for the actual loss of profits sustained 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 7.3 above, including one hundred eighty (180) days subsequent to completion of any required repairs or replacements necessary to return the Leased Property to a condition at least as good as the condition prior to the interruption event and sufficient to satisfy the requirements of the Operational Standards.

7.5 Waiver of Subrogation. All insurance policies described in Sections 7.1, 7.2, 7.3 and 7.4(a) shall provide for waiver of rights of subrogation against Landlord, Tenant, Manager and the holder of each Mortgage.

7.6 Other. Any insurance provided by Tenant under this Article 7 may be provided under the blanket insurance policies of Manager, which policies cover other hotel properties managed by Manager, subject, however, to the prior written approval of Landlord (which approval shall not be unreasonably withheld) if Landlord shall have an approval right pursuant to this Article 7 over the insurance coverage being provided by any such blanket insurance policy. All premiums, costs and expenses shall be allocated among the properties participating in such program. Coverage extended to any additional insured or additional named insured under these policies will expire on the Expiration Date.

7.7 Single Policy. Notwithstanding anything to the contrary contained in this Article 7, any insurance coverage required to be provided by Landlord under this Article 7 may be provided by Tenant on behalf of Landlord under a single policy, and any insurance required to be provided by Tenant under this Article 7 may be provided by Landlord on behalf of Tenant under a single policy, provided that (i) any such coverage shall otherwise comply with the foregoing provisions of this Article 7, including with respect to the naming of loss payees, named insureds and additional insureds, (ii) in the result of an insured claim, any such coverage shall result in the same allocation of proceeds as would have been made had the policies been maintained separately, and (iii) notwithstanding the fact that one party may maintain insurance coverage for the benefit of the other party, the cost of insurance under this Article 7 shall be allocated such that each party shall pay for its respective share of such insurance.

ARTICLE 8 DEFAULT AND TERMINATION

8.1 Tenant Default. The following events shall constitute a default by Tenant (subsequent to the associated notice and cure periods set forth in this Section 8.1, each an "Event of Default") under this Lease:

(a) Tenant shall fail to pay when due and payable any of the Rent herein provided for or any other sum agreed or required by this Lease to be paid by Tenant upon the respective dates that the same becomes due and payable and such failure shall continue for a period of five (5) business days after written notice of non-payment from Landlord; or

(b) Tenant shall fail to perform any other covenant of this Lease to be kept and performed by Tenant, and such failure shall thereafter continue for a period of thirty (30) days after written notice from Landlord to Tenant specifying the nature of said failure; provided that, if the default is one that cannot, by its nature, reasonably be cured within thirty (30) days, no Event of Default will have occurred hereunder if Tenant commences reasonable and diligent efforts to cure such default within such 30-day period after receipt of Landlord's notice and thereafter diligently prosecutes such efforts to completion; or

(c) Tenant shall file an application for, or consent to, the appointment of a receiver, trustee or liquidator of itself or of all of its assets, or file a voluntary petition in bankruptcy or for reorganization, or have filed against it an

involuntary petition in bankruptcy which is not dismissed within sixty (60) days, or file a pleading in any court of record admitting in writing its inability to pay its debts as they come due, or make a general assignment for the benefit of creditors or file an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a petition filed against it in any bankruptcy or reorganization proceeding; or

(d) any order, judgment or decree by any court of competent jurisdiction, is entered adjudicating Tenant as bankrupt, or appointing a receiver, trustee or liquidator of it or of all of its assets, and such order, judgment or decree continues unstayed and in effect for any period of ninety (90) consecutive days; or

(e) the Management Agreement is terminated for any reason during the Term, unless terminated by Tenant on account of the default or failure to perform by Manager; or

(f) Omitted; or

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(g) an act or omission of Tenant causes a default under the Mortgage; or

(h) Tenant violates Section 12.20.

8.2 Collateral Assignment. To secure payment and performance of Tenant's obligations to Landlord under this Lease, Tenant hereby irrevocably, absolutely and unconditionally assigns, transfers and conveys to Landlord, its successors and assigns, all of Tenant's right, title and interest, if any, and grants to Landlord a security interest, in and to all of Tenant's right, title and interest in and to the property and items set forth on Exhibit B hereto. The foregoing is intended to grant in favor of Landlord a first priority continuing lien and security interest in all of Tenant's personal property. Tenant authorizes Landlord (or holder of a Mortgage, on Landlord's behalf) and its counsel to file UCC statements in form and substance satisfactory to Landlord, describing the collateral as all assets and personal property of Tenant, whether now owned or existing or hereafter acquired or arising and wheresoever located, including all accessions thereto and products and proceeds thereof, or using words with similar effect. Tenant acknowledges, agrees and consents to the pledge by Landlord to any holder of a Mortgage of Landlord's rights, title, and interests herein as collateral security for the Landlord's obligations to any holder of a Mortgage.

8.3 Landlord's Remedies. Upon a continuing and uncured Event of Default, Landlord shall have, in addition to all rights and remedies provided by law, the right to terminate this Lease by delivery of written notice thereof to Tenant at any time prior to the cure of the Event of Default.

8.4 Surrender of the Leased Property. Tenant shall, on the Expiration Date, or on the earlier termination hereof, peaceably and quietly leave (subject to any continuing rights of Tenant to enter onto the Leased Property for the purposes specifically contemplated in this Lease), surrender and yield up unto Landlord the Leased Property in good order and repair, excepting reasonable wear and tear. Upon the termination of this Lease for any reason, (i) Landlord, or a purchaser of Landlord's interest in the Leased Property, shall purchase all of the Hotel Personalty (including FF&E) owned by Tenant and all of the Operating Supplies owned by Tenant and used in connection with the Leased Property (if any) for an amount equal to the fair market value of such Hotel Personalty and Operating Supplies as of the date of termination, (ii) Tenant shall leave at the Hotel the Hotel Personalty and Operating Supplies not owned by Tenant (which shall be in a condition consistent with the Operational Standards), and (iii) Tenant shall assign the Assigned Items to Landlord. Tenant shall also reasonably cooperate for thirty (30) days with any successor tenant or owner of the Hotel upon the expiration or termination of this Lease to effect a smooth and efficient transition in the operation of the Hotel. Upon termination of this Lease and surrender of the Hotel by Tenant, Landlord shall either assume or cause to be assumed all of the Assigned Items and perform or otherwise cause to be performed all of Tenant's obligations thereunder relating to any period after the Expiration Date.

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8.5 Landlord's Right to Cure. Tenant agrees that, if an Event of Default occurs, Landlord may, but shall not be obligated to, after the occurrence of the Event of Default, until the same has been cured, and after notice or demand to Tenant, without

waiving or releasing Tenant from any of Tenant's obligations under this Lease, make any payment or perform such other act in whole or in part to the extent Landlord may deem desirable and, in connection therewith, to pay expenses and employ legal counsel. All sums paid by Landlord pursuant to this Section 8.5 and all reasonable expenses, including reasonable attorneys' fees, paid in connection therewith, together with interest thereon at the Default Interest Rate calculated from the date of payment by Landlord, shall be deemed to be Rent hereunder and shall be payable upon demand by Landlord, and Landlord shall have the same rights and remedies for the nonpayment thereof as in the case of default in the payment of Rent.

8.6 Tenant's Bankruptcy or Insolvency. If Tenant shall be subjected to the provisions of the United States Bankruptcy Code or other law of the United States or any state thereof for the protection of debtors as in effect at such time (each a "Debtor's Law"), the debtor-in-possession and any trustee or receiver of Tenant's assets (each a "Tenant's Representative") shall have no greater right to assume or assign this Lease or any interest in this Lease, or to sublease any of the Leased Property then accorded to Tenant by the specific provisions of this Lease, except to the extent Landlord shall be required to permit such assumption, assignment or sublease by the provisions of such Debtor's Law. Without limitation of the generality of the foregoing, any right of any Tenant's Representative to assume or assign this Lease or to sublease any of the Leased Property shall be subject to the conditions that:

(a) Such Debtor's Law shall provide to Tenant's Representative a right of assumption of this Lease which Tenant's Representative shall have timely exercised and Tenant's Representative shall have fully cured any default of Tenant under this Lease.

(b) Tenant's Representative or the proposed assignee, as the case shall be, shall have deposited with Landlord as security for the timely payment of rent an amount equal to three (3) months' Rent and other monetary charges accruing under this Lease, and shall have provided Landlord with adequate other assurance of the future performance of the obligations of Tenant under this Lease. Without limitation, such assurances shall include, at least, in the case of assumption of this Lease, demonstration to the satisfaction of Landlord that Tenant's Representative has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that Tenant's Representative will have sufficient funds to fulfill the obligations of Tenant under this Lease.

(c) In the case of assignment, submission of current financial statements of the proposed assignee, audited by an independent certified public accountant reasonably acceptable to Landlord and showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of all of Tenant's obligations under this Lease.

(d) Any existing or proposed assumption or assignment of this Lease and any subleasing of any part or all of the Leased Property will not breach any provision of any other lease, mortgage, financing agreement or other agreement by which Landlord is bound.

8.7 Attorneys' Fees. If at any time litigation is instituted between Landlord and Tenant with respect to this Lease, the prevailing party in such litigation may recover from the losing party all court costs, reasonable costs of litigation and reasonable attorneys' fees incurred or expended by the prevailing party in such action.

8.8 Remedies Cumulative. To the maximum extent permitted by law, each legal, equitable or contractual right, power and remedy of Landlord or Tenant, now or hereafter provided either in this Lease or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Landlord or Tenant (as applicable) of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord of any or all of such other rights, powers and remedies.

8.9 Liability for Tenant's Obligations. Landlord covenants and agrees to look solely to Tenant (and not its Affiliates) for all obligations of Tenant under this Lease.

8.10 Default by Landlord. Landlord shall not be in default of any obligation of Landlord hereunder unless and until Landlord has failed to perform such obligation within thirty (30) days after receipt of written notice of such failure from Tenant; provided, however, that in the event the nature of Landlord's obligation is such that more than thirty (30) days are required for complete

performance, Landlord shall not be in default pursuant to this Section 8.10 if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes such performance to completion.

8.11 Holding Over. Tenant acknowledges that (a) Tenant's complete vacancy and surrender of the Leased Property in strict compliance with Section 8.4 (and all other provisions of this Lease) on or before the Expiration Date or earlier termination may be critical to the sale by Landlord of the Leased Property, and (b) if Tenant or any Person occupying the Leased Property (or any part thereof) by or through Tenant holds over past the Expiration Date for any period of time, however brief, such holding over will compromise and deleteriously affect Landlord's ability to timely conclude any sale of the Leased Property. In light of the foregoing, (i) Tenant and any Person occupying the Leased Property (or any part thereof) by or through Tenant shall not be permitted to hold over for any period of time beyond the Expiration Date for any reason or length of time, (ii) if Tenant (or any Person holding through Tenant) shall hold over for any period whatsoever, Tenant shall be a tenant at sufferance, subject to eviction without notice, and (iii) Tenant shall indemnify, defend (with legal counsel reasonably approved by Landlord), and hold Landlord harmless from all causes of action, claims, debts, liabilities, controversies, damages, costs, losses, and expenses (including reasonable attorneys' fees) suffered or incurred by Landlord, including lost profits, by reason of Tenant's failure (or the failure of any Person occupying all or any portion of the Leased Property under or through Tenant) to completely vacate and surrender the Leased Property on or before the Expiration Date in strict compliance with Section 8.4 and all other applicable provisions of this Lease.

ARTICLE 9 CASUALTY OR CONDEMNATION

9.1 Restoration. If, during the Term, the Hotel is damaged or destroyed by fire, casualty or other cause, Landlord shall, at its cost and expense and with all reasonable diligence, comply with the requirements of each Mortgage, as such document pertains to casualty and repair. If the Leased Property, or any material part thereof, shall be rendered untenable by reason of such damage and such damage shall not be due to the fault of Tenant or of Persons Within Tenant's Control, then the Base Rent hereunder, or an amount thereof apportioned according to the area of the Leased Property so rendered untenable (if less than the entire Leased Property shall be so rendered untenable), shall be abated for the period from the date of such damage to the date when the damage shall have been repaired as aforesaid. If all or any part of the Leased Property shall be damaged or destroyed by fire or other casualty such that the Hotel is closed and Landlord determines in its reasonable judgment that the damage cannot be fully restored within 365 days, then either Landlord or Tenant may terminate this Lease by notice given to the other party not later than thirty (30) days after the determination by Landlord that the Leased Property cannot be restored within such time period. If this Lease is terminated pursuant to this Section 9.1, all insurance proceeds shall be paid to Landlord free of any claim or interest therein whatsoever of Tenant. If this Lease is not terminated as the result of any fire or other casualty, then, subject to the rights of the holder of each Mortgage, the proceeds of any casualty insurance or the equivalent thereof shall be used by Landlord to pay for the cost of restoration.

9.2 Condemnation. If, during the Term, all or any part of or interest in the Hotel is taken by any public authority under the power of eminent domain or by purchase in lieu thereof, Landlord shall, at its cost and expense and with all reasonable diligence, comply with the requirements of each Mortgage, as such document pertains to condemnation and restoration. If only a part of the Leased Property shall be so condemned or taken, then effective as of the date of vesting of title, the Base Rent and shall be abated in an amount apportioned according to the area of the Leased Property so condemned or taken. If all or any part of or interest in the Hotel is taken by any public authority under the power of eminent domain or by purchase in lieu thereof, such that the Hotel is closed and Landlord determines in its reasonable judgment that the Hotel cannot be reopened within 365 days, then either Landlord or Tenant may terminate this Lease by notice given to the other party within thirty (30) days after possession of the Leased Property has been taken. If this Lease is terminated pursuant to this Section 9.2, then, subject to the rights of the holder of any applicable Mortgage, all awards and proceeds of condemnation shall be paid to Landlord free and clear of any claim or interest therein whatsoever of Tenant. Tenant shall have no claim against the condemning authority, whether for the value of its leasehold estate or otherwise.

ARTICLE 10 ASSIGNMENT AND SUBLETTING

10.1 Assignment or Subletting. Tenant shall not assign, transfer, mortgage, hypothecate, or encumber, by operation of law or otherwise, this Lease, or any of Tenant's interest herein or hereto, nor sublet the Leased Property, or any portion thereof, nor grant any license or right of use or occupancy with respect to the Leased Property, without the prior written consent of Landlord, which consent may be withheld by Landlord in its sole and absolute discretion. In addition, Tenant shall not do any of the

foregoing without the prior written consent of the holder of any Mortgage if and to the extent such consent is required by such Mortgage or related loan documents. Any consent shall be specifically conditioned upon Tenant's compliance with all of the provisions of this Article 10. Any attempt to do otherwise shall be absolutely and unconditionally null and void and of no force or effect whatsoever.

10.2 Notice. If Tenant desires to undertake any such transaction, it shall provide Landlord with written notice of such desire, specifying the consideration for, and all other terms and conditions of such proposed transaction, and identifying the proposed assignee or subtenant (the "Proposed Party"). Tenant shall also provide Landlord with such corporate, financial, and insurance information as Landlord may reasonably request concerning the Proposed Party.

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10.3 Continued Primary Liability. Notwithstanding any assignment, conveyance or subletting, permitted or otherwise, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the Rent and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease.

10.4 Miscellaneous. Notwithstanding any other provision of this Article 10 to the contrary, in connection with any proposed assignment or subletting, (a) Tenant shall pay to Landlord all reasonable expenses, including reasonable attorneys' fees incurred by Landlord in connection with the transaction, (b) Tenant and its proposed party shall, within ten (10) days after notice to do so, execute and deliver to Landlord such documents, including insurance, and take such further action, as Landlord may reasonably require to effect such transaction or to protect Landlord's rights, (c) the acceptance by Landlord of Rent from any other person other than Tenant shall not be deemed a waiver by Landlord of any provision of this Lease or a consent to any transaction subject to this Article 10, (d) the consent to any particular transaction shall not be deemed a consent to any other transaction subject to this Article 10, and (e) the consent to any assignment, subletting or other such transfer (or the consummation of any such transaction) shall not in any way relieve Tenant of any of its obligations under this Lease, whether arising before or after such consent.

ARTICLE 11 SUBORDINATION

11.1 Subordination.

(a) This Lease shall be subject and subordinate to any existing or future Mortgage. Tenant shall execute such instruments as shall from time to time be reasonably requested by the holder of the Mortgage confirming such subordinated status. Tenant agrees that if a Foreclosure Purchaser shall succeed to the interest of Landlord in the Leased Property, (i) this Lease will terminate by operation of law or upon written notice to Tenant from the Foreclosure Purchaser, as applicable, (ii) the holder of such Mortgage shall not have any obligation under this Lease to Tenant, (iii) Tenant's rights in and ownership of any FF&E or other property or items set forth on Exhibit B hereto owned or leased by Tenant shall terminate by operation of law or upon written notice to Tenant, as applicable (if by written notice to Tenant from the Foreclosure Purchaser, Tenant shall deliver to the Foreclosure Purchaser such assignments and bills of sale as the Foreclosure Purchaser may require to evidence the transfer of such FF&E and other property or items), and (iv) Tenant shall cooperate with the Foreclosure Purchaser with respect to delivery of all licenses and permits, if any, held by Tenant.

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(b) In the event of any foreclosure of any Mortgage or conveyance in lieu of foreclosure, neither the Foreclosure Purchaser nor its successors or assigns shall in any way or to any extent (i) be bound by any modification or amendment of this Lease executed after the date of this Lease or by any existing prepayment of Rent for a period greater than one (1) month, unless such modification, amendment or prepayment shall have been expressly approved in writing by such Foreclosure Purchaser, (ii) be bound by any assignment of Tenant's interest in this Lease by Tenant or by operation of law or otherwise (except for any assignment of Tenant's interest in this Lease by Tenant made in accordance with the terms of this Lease, which assignment shall be expressly subject to the security interests of the holder of the Mortgage, including, without limitation, any security interests granted to Landlord by Tenant and pledged or assigned including, without limitation, any notices by Landlord to the holder of any Mortgage as permitted under Section 8.2 above) without the express prior written consent of such Foreclosure Purchaser, (iii) be obligated or liable to Tenant with respect to any act or failure to act on the part of Landlord occurring prior to the transfer of title to the Foreclosure Purchaser, or (iv) be obligated or liable

to Tenant for failure to complete any proposed construction regarding the Leased Property. Except to the extent permitted in accordance with the preceding sentence, Tenant shall have no right to assert or claim any of the foregoing or any damages arising therefrom against the Foreclosure Purchaser, whether as an offset or defense or otherwise.

(c) After notice is given to Tenant by the Foreclosure Purchaser that the rents under this Lease should be paid to the Foreclosure Purchaser, Tenant shall pay to the Foreclosure Purchaser, or in accordance with the directions of the Foreclosure Purchaser, all rents and other monies due and to become due to Landlord under this Lease, and Landlord hereby expressly authorizes Tenant to make such payments to the Foreclosure Purchaser and hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments.

(d) Tenant agrees to provide to the Foreclosure Purchaser a copy of any notice, demand or request provided to Landlord under this Lease at the address of the Foreclosure Purchaser provided to Tenant by the Foreclosure Purchaser.

(e) If the terms of this Lease conflict with the terms of any Mortgage regarding the matters set forth in this Section 11.1, the terms of the Mortgage shall control.

ARTICLE 12 MISCELLANEOUS

12.1 Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon compliance with the obligations of Tenant hereunder, and subject to the provisions hereof, shall lawfully and quietly enjoy the Leased Property and Tenant's rights hereunder during the Term without hindrance by Landlord or any Persons by, through and under Landlord.

12.2 Landlord's Right of Entry. Landlord, its employees and agents, shall have the right to enter the Hotel at reasonable times and on reasonable notice to Tenant to examine the condition and use thereof, exhibit the same, and otherwise perform its obligations and exercise its rights hereunder. Landlord will endeavor to examine the Hotel or otherwise perform its obligations and exercise its rights with minimum disruption to the operation of the Hotel.

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12.3 Estoppel Certificates. Tenant and Landlord, from time to time within ten (10) business days following written request by the other party or by the holder of any Mortgage of the Leased Property, shall execute, acknowledge and deliver to the requesting party or its designee a written statement in form and substance reasonably requested by such requesting party certifying to such requesting party or to such other Person as such requesting party may designate (i) the commencement and expiration dates of the Term, (ii) that this Lease is unmodified and in full force and effect or, if there have been modifications, that the same is in full force and effect as modified and setting forth the modifications, (iii) the dates to which Rent and other payments due under this Lease from Tenant have been paid in advance, if any, and (iv) whether or not, to the best knowledge of the party signing such certificate, the requesting party is in default in the performance of any term, covenant or condition contained in this Lease or any Mortgage and, if so, specifying each such default of which the signing party may have knowledge. Such certificate shall also set forth such other information regarding this Lease as may reasonably be requested or, with respect to a certificate delivered by Tenant, regarding the Management Agreement as may be reasonably requested, including, without limitation, (A) that the Management Agreement is in full force and effect, and (B) that there is no material uncured default, breach or violation existing thereunder by either party thereto and that, to Tenant's knowledge, no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a material default, breach or violation by either party thereunder.

12.4 Delivery of Notices.

(a) If Tenant shall give Landlord any notice of a default or breach by Landlord, Tenant shall simultaneously deliver a written notice of such breach or default to the holder of all Mortgages.

(b) If Landlord shall receive any written notice from a Governmental Authority, a mortgagee under any Mortgage or any party commencing a litigation against Landlord or the Leased Property, Landlord shall, upon receipt of such notice, deliver a copy thereof to Tenant.

12.5 Notices. All notices, demands, consents, approvals, requests or other communications that either Landlord or Tenant may desire or be required to give hereunder (collectively, "Notices") shall be in writing and shall be given by personal delivery or facsimile or United States registered or certified mail (postage prepaid, return receipt requested) addressed as hereinafter provided, provided, however, that any Notice given by facsimile shall also be given by personal delivery or United States registered or certified mail. Except as otherwise specified herein, the time period in which a response to any notice or other communication must be made, if any, shall commence to run on the earliest to occur of (a) if by personal delivery, the date of receipt, or attempted delivery, if such communication is refused; (b) if given by facsimile, the date on which such facsimile is transmitted and confirmation of delivery thereof is received; and (c) if sent by mail (as aforesaid), the date of receipt or attempted delivery, if such mailing is refused. Until further notice, notices and other communications under this Agreement shall be addressed to the parties listed below as follows:

- (a) Each notice to Tenant shall be delivered to Tenant at the following addresses:

PHR CHERRY OPCO SUB, LLC
c/o Procaccianti Companies
1140 Reservoir Avenue
Cranston, Rhode Island 02920-6320
Attention: Ron M. Hadar, General Counsel

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and

Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
Attention: Catherine E. Morgen, Esq.
Facsimile: (404) 365-9532

- (b) Each notice to Landlord shall be delivered to Landlord at the following address:

PHR Cherry Propco, LLC c/o Procaccianti Companies
1140 Reservoir Avenue
Cranston, Rhode Island 02920-6320
Attention: Ron M. Hadar, General Counsel

and

Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
Attention: Catherine Morgen, Esq.
Facsimile: (404) 365-9532

Either party shall have the right from time to time during the term of this Lease to change the address thereof and to specify as the address thereof any other address within the United States of America.

12.6 No Broker. Tenant and Landlord each represents and warrants to the other that no broker or finder was engaged in connection with the execution of this Lease and each agrees to indemnify and hold the other harmless of and from and against all liabilities, costs and expenses (including reasonable attorneys' fees) arising from any claim by any such broker or finder arising out of the acts of the indemnifying party.

12.7 Quarterly Meetings. Landlord covenants to meet with Tenant not less frequently than quarterly (and otherwise, as may be reasonably requested by Tenant) so as to review and consult with Tenant with respect to any and all matters concerning the Leased Property that Tenant may desire to discuss, including, without limitation, the condition of the Leased Property.

12.8 No Joint Venture. Nothing contained in this Lease shall be construed to make Landlord and Tenant partners or joint venturers or to render any of said parties liable for the debts or obligations of the others or to create any agency relationship between the parties.

12.9 Partial Invalidity. If any provisions of this Lease or the application thereof to any Person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

12.10 Third Parties. The Lease is made for the exclusive benefit of the parties hereto and their successors and assigns herein permitted and not for any third party other than (only to the extent specifically provided in Section 11.1, 12.3 and 12.4) the holder of any Mortgage and any Foreclosure Purchaser, and, except to such extent, nothing in this Lease, expressed or implied, is intended to confer upon any Person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by this Lease.

12.11 Waivers and Enforcement. No delay or omission by either of the parties hereto to exercise any right or power accruing upon any non-compliance or failure of performance by the other party under the provisions of this Lease shall impair any such right or power or be construed to be a waiver thereof. The failure herein to specify a right, power or remedy accruing upon any non-compliance or failure of performance by either of the parties hereto shall not be construed to be a waiver thereof so as to impair the right of the party thereby aggrieved to all remedies then available to it at law or in equity by reason of such noncompliance or failure of performance. A waiver by either of the parties hereto of performance of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant condition or agreement herein contained.

12.12 Modification. This Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other agreements, oral or written, between the parties on or prior to the date hereof with respect to such subject matter. None of the covenants, terms or conditions of this Lease to be kept and performed by either party to this Lease shall in any manner be waived, modified, changed or abandoned except by written instrument duly signed, acknowledged and delivered by the parties to this Lease. Any amendment to this Lease that is not ministerial in nature shall require the prior written consent of the holder of any Mortgage to the extent required in such Mortgage.

12.13 Non-Recourse Liability. Landlord and each of its officers, directors, affiliates, shareholders, members and constituent partners, as applicable, shall in no event or at any time be personally liable for the payment or performance of any obligation required or permitted of Landlord under this Lease or under any document executed in connection herewith. In the event of any actual or alleged failure, breach or default by Landlord under this Lease or any such document, the sole recourse of Tenant shall be against the interest of Landlord in the Leased Property. No attachment, execution, writ, or other process shall be sought or obtained, and no judicial proceeding shall be initiated by or on behalf of Tenant, against Landlord (or any of Landlord's officers, directors, affiliates or constituent partners or shareholders) personally or Landlord's assets as a result of any such failure, breach, or default. In no event shall Landlord have any liability for any loss of profits, business interruptions and/or consequential damages of Tenant.

12.14 Captions. The Article and Section headings or captions are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

12.15 Time of Essence. Time is of the essence as to the covenants in this Lease.

12.16 Successors and Assigns. All the covenants, agreements, conditions and undertakings in this Lease shall extend and inure to and be binding upon the successors and permitted assigns of each of the parties hereto, the same as if they were in every case named and expressed.

12.17 No Recordation. Neither party shall record this Lease or any memorandum thereof.

12.18 Name Landlord shall have the right to change the name of the Hotel at any time and from time to time and the right to place any signs in or on the Hotel from time to time indicating the name of the Hotel as designated by Landlord. Landlord and Tenant shall at all times refer to the Hotel by such name as is designated by Landlord from time to time. Tenant shall have no right to place any signs on the exterior of the Hotel without the prior written consent of Landlord.

12.19 Survival. All of the provisions of this Lease shall survive the termination of this Lease, and, except as otherwise specifically provided herein, neither party shall be relieved from any liability hereunder accruing prior to the Expiration Date.

12.20 Confidentiality. Tenant and Landlord each agree that it and its Affiliates will keep all non-public information obtained by them with respect to the business and business terms of the parties confidential and will not provide such information to any third parties without the prior written consent of the other party, unless required by court order or Law, except to their employees, agents, contractors, lenders, professionals and consultants on a need-to-know basis. Notwithstanding any terms or conditions in this Lease or any related agreement to the contrary, but subject to restrictions reasonably necessary to comply with federal or state securities laws, any Person may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided relating to such tax treatment and tax structure. For the avoidance of doubt, this authorization is not intended to permit disclosure of the names of, or other identifying information regarding, the participants in the transaction, or of any information of the portion of any materials not relevant to the tax treatment or tax structure of the transaction.

12.21 Conveyance by Landlord. If Landlord or any successor owner of all or any portion of the Leased Property conveys all or any portion of the Leased Property in accordance with the terms hereof, other than as security for debt, if the grantee or transferee of such of the Leased Property expressly assumes and agrees to perform, by written instrument in form approved by Tenant, which approval shall not unreasonably be withheld, all obligations of Landlord hereunder arising or accruing from and after the date of such conveyance or transfer, Landlord or such successor owner, as the case may be, shall thereupon be released from all liabilities and obligations hereunder arising or accruing from and after the date of such conveyance or other transfer, all such future liabilities and obligations shall thereupon be binding upon the new owner, and this Lease shall continue in full force and effect.

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12.22 Governing Law. This Lease shall be construed and enforced in accordance with the Laws of the State of Michigan.

12.23 Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument. Executed counterparts of this Lease delivered by facsimile transmission to the other party shall be binding on the party delivering such executed counterpart.

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IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed on the day, month and year first above dated.

LANDLORD:

PHR CHERRY PROPCO, LLC, a Michigan limited liability company

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Authorized Signer

TENANT:

PHR CHERRY OPCO SUB, LLC, a Michigan limited liability company

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Authorized Signer

[Signature Page to Hotel Lease – Cherry Tree Inn, Traverse City, MI]

SCHEDULE 3.1

Each of Fixed Rent” and “Percentage Rent” mean amounts per annum equal such amounts describe in that certain Transfer Study Report prepared by EY and effective July 30, 2021.

Exhibit A

Legal Description

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 B
The Collateral

1. Fixtures and Personal Property. All goods, inventory, machinery, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), furnishing, building supplies and materials, and all other personal property of every kind and nature whatsoever owned by Tenant (or in which Tenant has or hereafter acquires an interest) and now or hereafter located upon, or appurtenant to, the Property or used or useable in the present or future operation and occupancy of the Property, along with all accessions, replacements or substitutions of all or any portion thereof including, but not limited to, all items of personal property located within or adjacent to the Hotel and included within the definition of "Property and Equipment" and "Inventories" under the Uniform System of Accounts for the Lodging Industry as published by the American Hotel Association of the United States and Canada, including but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, Venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, tableware, uniforms, guest ledgers, foodcarts, cookware, dry cleaning facilities, dining room wagons, tools, keys or other entry systems, bars, bar fixtures, and other drink dispensers, icemakers, radios, televisions sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing equipment, fire prevention and extinguishing apparatus, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and disposals, washers and dryers and other customary hotel equipment, and computer software and hardware, but excluding, in all events, alcoholic beverages inventory;

2. Leases and Rents. All income, rents, room rates, issues, profits, revenues, deposits, accounts and other benefits from the operation of the Hotel, including, without limitation, all revenues, cash and credit card receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms and recreational facilities and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession, or other grant of the right of the possession, use or occupancy of all or any portion of the Land, the Hotel or personalty located therein, or rendering of services by Tenant or any operator or manager of the Hotel or the commercial space located therein or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, guest room or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales, all deposits or other security now or hereafter made with or given to any utility company by Tenant with respect to the Property, and all proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land and/or the Hotel whether paid or accruing before or after the filing by or against Tenant of any petition for relief under any present or future state or federal law regarding bankruptcy (each a "Bankruptcy Code"), reorganization or other relief to debtors and all proceeds from the sale or other disposition of the Tenant Leases (hereinafter defined). All leases, subleases, licenses and other agreements granting others the right to use or occupy all or any part of the Property together with all restatements, renewals, extensions, amendments and supplements thereto, (collectively, the "Tenant Leases"), now existing or hereafter entered into, and whether entered before or after the filing by or against Tenant of any petition for relief under a Bankruptcy Code, and all of Tenant's right, title and interest in the Tenant Leases, including, without limitation (i) all guarantees, letters of credit and any other credit support given by any tenant or guarantor in connection therewith (collectively, the "Tenant Lease Guaranties"), (ii) all cash, notes, or security deposited thereunder to secure the performance by the tenants of their obligations thereunder (collectively, the "Tenant Security Deposits"), (iii) all claims and rights to the payment of damages and other claims arising from any rejection by a tenant of its Tenant Lease under a Bankruptcy Code ("Bankruptcy Claims"), (iv) all of the landlord's rights in casualty or condemnation proceeds of a tenant in respect of the leased premises (collectively, the "Tenant Claims"), (v) all rents, ground rents, additional rents, revenues, termination and similar payments, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Property (collectively with the Tenant Lease Guaranties, Tenant Security Deposits, Bankruptcy Claims and Tenant Claims, the "Rents"), whether paid or accruing before or after the filing by or against Tenant of any petition for relief under a Bankruptcy Code, (vi) all proceeds or streams of payment from the sale or other disposition of the Tenant Leases or disposition of any Rents, and (vii) the right to receive and apply the Rents to the payment of

Tenant's obligations under this Lease and to do all other things which Tenant or a lessor is or may become entitled to do under the Tenant Leases or with respect to the Rents;

3. Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

4. Insurance Proceeds. All proceeds of, and any unearned premiums on, any insurance policies covering the Property, including, without limitation, the exclusive right to receive and apply the proceeds of any claim awards, judgments, or settlements made in lieu thereof, for damage to the Property;

5. Tax Certiorari. All refunds, rebates or credits in connection with a reduction in any taxes, including, without limitation, rebates as a result of tax certiorari or any other applications or proceedings for reduction;

6. Agreements. All agreements (including, without limitation, interest rate cap agreements, swaps or other interest hedging agreements), contracts (including, without limitation, the Management Agreement and construction, architectural, service, supply and maintenance contracts), registrations, permits, licenses (including, without limitation, liquor licenses, if any, to the fullest extent assignable by Tenant), franchise, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Property, or respecting any business or activity conducted from the Property, and all right, title and interest of Tenant therein and thereunder, including, without limitation, the right, while an Event of Default remains uncured, to receive and collect any sums payable to Tenant thereunder;

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7. Intangibles. All accounts, escrows, chattel paper, claims, deposits, trade names, trademarks, service marks, logos, copyrights, goodwill, licenses, permits, plans and specifications, environmental audits, engineering reports, warranties, guaranties, books and records and all other general intangibles and payment intangibles relating to or used in connection with the operation of the Property;

8. Accounts. All reserves, escrows and deposit accounts maintained by Tenant with respect to the Property, together with all cash, checks, drafts, certificates, accounts receivable, documents, letter of credit rights, commercial tort claims, securities, investment property, financial assets, instruments and other property from time to time held therein, and all proceeds, products, distributions, dividends or substitutions thereon or thereof, and all accounts (including, without limitation, any deposit accounts), impounds, contract rights, book debts, letters of credit, letter of credit rights, supporting obligations, drafts and notes arising from the operation of a hotel at the Property or arising from the sale, lease or exchange of goods or other property and/or the performance of services, and Tenant's rights to payment from any consumer credit/charge card organization or entities which sponsor and administer such cards, including, without limitation, the American Express card, the Visa card, the Discover card, and the MasterCard;

9. Rights to Conduct Legal Actions. The right, in the name and on behalf of Tenant, to commence any action or proceeding to protect the interest of Landlord in the Property and to appear in and defend any action or proceeding brought with respect to the Property; and

10. Proceeds. All proceeds and profits arising from the conversion, voluntary or involuntary, of any of the foregoing into cash (whether made in one payment or a stream of payments) and any liquidation claims applicable thereto.

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PROMISSORY NOTE

Amount: \$4,000,000

Date: July 30, 2021

Due: As set forth below

FOR VALUE RECEIVED, PHR CHERRY PROPCO, LLC, an Michigan limited liability company (“Borrower”) promises to pay to the order of **EMERALD CAPITAL LENDING III, LLC**, a Delaware limited liability company (“Lender”), the sum of Four Million Dollars (\$4,000,000.00) 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 9.00% per annum. During the period of any default, the rate of interest shall be increased to 15.000% per annum.

1. PAYMENTS AND MATURITY.

(a) Commitment Fee. Borrower shall pay to Lender an origination fee in the amount of \$20,000.00, which amounts shall be paid prior to or upon delivery of this Promissory Note (this “Promissory Note”).

(b) Interest shall be payable on the outstanding principal balance of this Promissory Note and any and all other amounts owing by Borrower to Lender under this Promissory Note at the rate of Nine (9%) per annum, compounded monthly, if not paid. Such interest shall be calculated on the basis of a three hundred sixty (360)-day year for the actual number of days elapsed.

(c) Payments of Interest shall be payable in arrears on the 1st day of the day of the month commencing on September 1, 2021. Payments shall be made to Lender at 1140 Reservoir Ave., Cranston, RI 02920-6320 or as otherwise directed by Lender:

(d) All principal and unpaid interest under this Promissory Note shall be repaid on the earlier of (A) six (6) months following date hereof or (B) the date of acceleration as set forth in Section 2 below (“Maturity Date”) or the sooner repayment of this Promissory Note. 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 and during the continuance of the foregoing event of default or upon the occurrence and during the continuance of any Event of Default by the Borrower under the Mortgage, as defined therein, 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 actually incurred, 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.

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3. **SECURITY.** This Promissory 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.

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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.

9. **GOVERNING LAW.** This Promissory Note and the liability of all parties hereunder shall be governed by the laws of the State of Michigan, except with respect to paragraph 7 above, which shall be governed by the laws of The Commonwealth of Massachusetts, without regard to its conflicts of law principles, 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:
PHR CHERRY PROPCO, LLC

By: Procaccianti Hotel REIT, L.P., its Member
By: Procaccianti Hotel REIT, Inc., its General Partner

By: /s/ James A. Procaccianti
Name: James A. Procaccianti
Title: President

[Signature Page to Promissory Note]

DRAFTED BY AND
WHEN RECORDED RETURN TO:

Ron M. Hadar
EMCAP Lending
1140 Reservoir Ave.
Cranston, RI 02920-6320

**MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Mortgage”) made as of July 30, 2021, **PHR CHERRY PROPCO, LLC**, a Michigan limited liability company (“Mortgagee”), whose address is 1140 Reservoir Ave., Cranston, RI 02920-6320 (“Mortgagor”), in favor of **EMERALD CAPITAL LENDING III, LLC**, a Delaware 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 Four Million and 00/100 Dollars (\$4,000,000.00). 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.

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, rights of tenants, as tenants only, under Leases (as hereinafter defined), hotel guests in occupancy, and real estate taxes and assessments not yet due and payable (collectively, "Permitted Exceptions"); 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, subject to the Permitted Exceptions, 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.

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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; and

(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.

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 in all material respects 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 (or cause to be provided and kept 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.

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.

2.8 Sale, Transfer or Encumbrance.

(a) Except as permitted hereunder or following Mortgagee's prior written consent, 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.

(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.

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 and is continuing 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, subject to the rights of tenants and hotel guests. 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).

(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 (excluding all consequential damages other than to the extent actually incurred by Mortgagee as a result of a third party claim) 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:

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(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 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.

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;

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(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 (other than by Mortgagee).

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 Mortgagor.

(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 falls 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.

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 the occurrence and during the continuance of 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. For purposes of this fixture filing, the "Debtor" is the Mortgagor and the "Secured Party" is the Mortgagee. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto. Mortgagor is the record owner of such land. The respective addresses of Mortgagor as debtor, and of Mortgagee, as secured party from which information concerning the security interest may be obtained, are as set forth in the preamble to this Mortgage. The name of the record owner, or in the case of chattel leases, lessee, of the subject property is Mortgagor.

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: PHR CHERRY PROPCO, LLC
1140 Reservoir Ave.
Cranston, RI 02920-6320

To Mortgagee: EMERALD CAPITAL LENDING III, 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. 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. 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 (but excluding the rental of guest rooms in the ordinary course) 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 and is continuing, 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, 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 and during the continuance 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, to the full extent permitted by applicable law, 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:

PHR CHERRY PROPCO, LLC

By: /s/ James A. Procaccianti

Name: James A. Procaccianti

Title: Authorized Signer

STATE OF RHODE ISLAND §
 §
COUNTY OF PROVIDENCE §

The foregoing instrument was acknowledged before me this 28th day of July, 2021, by James A. Procaccianti, as authorized signer of PHR CHERRY PROPCO, LLC, a Michigan limited liability company, on its behalf.

Date: July 28, 2021

/s/ Ron M. Hadar

Notary Public

Print Name: Ron M. Hadar

My Commission Expires: 12/28/23

[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".