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OFFICIAL RECORD
Requested By:
Stewart Title - Carson
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 25 Fee: \$38.00
BK-513 PG-5132 RPTT: 0.00



A.P.N. 1320-30-211-094

Recording requested by,
and after recording, return to:

Dena Reed
Sr. Escrow Officer/AVP
Stewart Title Company
704 W. Nye Lane
Suite 101
Carson City, NV 89703
01415-30930R

**COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS,
FINANCING STATEMENT AND INCLUDING FIXTURE FILING**

TRUSTOR: MINDEN HOSPITALITY, INC, A NEVADA CORPORATION
TRUSTEE: STEWART TITLE, a Nevada corporation
BENEFICIARY: BANK OF CAMDEN,
a Tennessee corporation
PROPERTY: 1795 Ironwood Drive, Minden, NV 89423

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY HEREIN CONVEYED.

THIS DEED OF TRUST (herein "**Instrument**"), made and given as of May 2, 2013, by the Trustor, Minden Hospitality, Inc, a Nevada corporation, whose address is 1795 Ironwood Drive, Minden, NV 89423 (herein "**Borrower**"), in favor of **Stewart Title Company**, 704 W. Nye Lane, Suite 101 Carson City, NV 89703, a Nevada corporation, whose address is (herein "**Trustee**"), for the benefit of the Beneficiary, **BANK OF CAMDEN**, a Tennessee corporation, whose address is 430 Mountbrook Lane, Suites 207-208, Knoxville, TN 37919 (herein "**Lender**"), as Beneficiary.

WITNESSETH:

THAT, WHEREAS, Borrower is justly indebted to Lender in the principal sum of **One Million, Two Hundred Ninety-One Thousand, One Hundred and Eighty-One Dollars and Ninety-Six Cents (\$1,291,181.96)**, pursuant to a certain Promissory Note of even date herewith, more particularly described below,



NOW, THEREFORE, in consideration of the indebtedness herein recited and the trust herein created, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower irrevocably grants, conveys and assigns to Trustee, in trust, WITH POWER OF SALE, all of Borrower's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located in the City of Minden, County of Douglas, State of Nevada, commonly known as 1795 Ironwood Drive, Minden, NV 89423, and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, and water rights, appurtenant to the property (collectively the "**Premises**");

TOGETHER with all of Borrower's estate, right, title and interest, now owned or hereafter acquired, in, under, and to:

(a) all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises; including but without being limited to, all heating, air conditioning and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, and shrubbery and plants, and including also all interest of any owner of the Premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause (a) shall be deemed part of the realty covered by this Instrument and not severable wholly or in part without material injury to the freehold of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "**Improvements**");

(b) all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to (i) a taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

(c) return premiums or other payments upon any insurance any time provided with respect to the Premises, Improvements, and other collateral described herein for the benefit of or naming Lender, and refunds or rebates of taxes or assessments on the Premises;

(d) all written and oral leases, rental agreements or room rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "**Leases**") now or hereafter affecting the Premises including, without limitation, all rents, issues, income, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment ("**Rents**"), all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Borrower may



have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding;

(e) plans, specifications, contracts and agreements relating to the design or construction of Improvements on the Premises;

(f) all contracts, deposits, deposit accounts, accounts, all rights, claims or causes of action pertaining to or affecting the Premises or the Improvements;

(g) all books, records, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein;

(h) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein, including but not limited to lease and real-estate proceeds and other amounts relating to the use, disposition, or sale of the collateral described herein which proceeds or other amounts are characterized as general intangibles;

(i) All of the foregoing described collateral is exclusive of any equipment, inventory, furniture, furnishings or trade fixtures owned and supplied by tenants of the Premises. The Premises, the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "**Property**"; and

(j) TO HAVE AND TO HOLD the above-described Property unto Trustee in trust for the benefit of Lender and its successors and assigns forever.

BUT THIS IS A TRUST DEED

TO SECURE TO Lender (a) the repayment of the indebtedness evidenced by that certain Promissory Note dated of even date herewith in the principal face amount of **One Million, Two Hundred Ninety-One Thousand, One Hundred and Eighty-One Dollars and Ninety-Six Cents (\$1,291,181.96)**, executed by Borrower and payable to the order of Lender, with interest thereon as set forth therein, and all renewals, extensions and modifications thereof (herein a "**Note**"); (b) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Borrower's obligations hereunder or under the other Loan Documents (as defined below); (c) the performance of the covenants and agreements of Borrower contained herein or in the other Loan Documents; and (d) the repayment of all sums now or hereafter owing to Lender by Borrower pursuant to any instrument which recites that it is secured hereby. The indebtedness and obligations described in clauses (a)-(d) above are collectively referred to herein as the "**Indebtedness**." The Promissory Note Agreement between Borrower and Lender of even date herewith, this Instrument, and all other documents evidencing, securing or guaranteeing the Indebtedness, as the same may be modified or amended from time to time, are referred to herein as the "**Loan Documents**." The terms of the Note secured hereby may provide that the interest rate or payment terms or balance due may be adjusted, renewed, or renegotiated from time to time, and this Instrument shall continue to secure the Note notwithstanding any such adjustment, renewal or renegotiation.



THIS INSTRUMENT IS COVERED BY NEVADA REVISED STATUTES SECTION 106.300 ET. SEQ., AND SECURES FUTURE ADVANCES AND/OR FUTURE OBLIGATIONS WITHIN THE MEANING OF NEVADA REVISED STATUTES 106.300 ET. SEQ., AS AMENDED, THE TOTAL PRINCIPAL AMOUNT OF WHICH SHALL NOT EXCEED ONE MILLION, TWO HUNDRED NINETY-ONE THOUSAND, ONE HUNDRED AND EIGHTY-ONE DOLLARS AND NINETY-SIX CENTS (\$1,291,181.96) PLUS INTEREST AND FUTURE OBLIGATIONS MADE OR INCURRED AND THE REASONABLE PROTECTION OF THE SECURITY. See NRS 106.300 to 106.400.

THE MATURITY DATE OF THE NOTE IS July 1, 2018.

Borrower represents and warrants that Borrower has good, marketable and insurable title to, and has the right to grant, convey and assign an indefeasible fee simple estate in, the Premises, Improvements, Rents and Leases (or, if this Instrument is on a leasehold, good, marketable and insurable title to, and the right to convey the leasehold estate and that the Ground Lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), and the right to convey the Property, that the Property is unencumbered except as disclosed in writing to and approved by Lender prior to the date hereof, and that Borrower will warrant and forever defend unto Trustee the title to the Property against all claims and demands.

Borrower represents, warrants, covenants and agrees for the benefit of Lender as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the Indebtedness and other charges provided in the Loan Documents and all other sums secured by this Instrument.

2. IMPOUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. Except as is hereinafter provided with respect to the impounding of such payments by Lender following the occurrence of an Event of Default, Borrower shall pay or cause to be paid when due, prior to delinquency, all annual real estate taxes, personal property taxes, room taxes on hotel or motel rooms, insurance premiums, assessments, water and sewer rates, ground rents and other charges (herein "**Impositions**") payable with respect to the Property. Upon the occurrence of an Event of Default (hereinafter defined), and at Lender's sole option at any time thereafter, Borrower shall pay in addition to each monthly payment on the Note, one-twelfth of the annual Impositions (as estimated by Lender in its sole discretion), to be held by Lender without interest to Borrower, for the payment of such Impositions (such payments being referred to herein as "**Impounds**"). Annually during the term of this Instrument, Lender shall compare the Impounds collected to the Impositions paid or to be paid. If the amount of such Impounds held by Lender at such time shall exceed the amount deemed necessary by Lender to provide for the payment of Impositions as they fall due, if no Event of Default shall have occurred and be continuing, such excess shall be at Borrower's option, either repaid to Borrower or credited to Borrower on the next monthly installment or installments of Impounds due. If at any time the amount of the Impounds held by Lender shall be less than the amount deemed necessary by Lender to pay Impositions as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty (30) days after notice from Lender to Borrower requesting payment thereof. Upon the occurrence of an Event of Default hereunder, Lender may apply, in any



amount and in any order as Lender shall determine in Lender's sole discretion, any Impounds held by Lender at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall refund to Borrower any Impounds then held by Lender. If requested by Lender, Borrower shall promptly furnish to Lender all notices of Impositions which become due, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, each complete installment payment received by Lender from Borrower under the Note or this Instrument shall be applied by Lender first in payment of the amount payable to Lender by Borrower under Section 2 hereof, then to interest payable on the Note, then to principal of the Note. Upon the occurrence of an Event of Default, Lender may apply, in any amount and in any order as Lender shall determine in Lender's sole discretion, any payments received by Lender under the Note or this Instrument. Any partial payment received by Lender shall, at Lender's option, be held in a non-interest bearing account until Lender receives funds sufficient to equal a complete installment payment.

4. CHARGES, LIENS. Borrower shall promptly discharge or bond off any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without Lender's prior written permission and without the consent of Borrower, Borrower shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record or bonded off and deliver evidence of such release or bonding to Lender. Borrower may contest any such lien by appropriate proceedings in good faith, timely filed, provided that enforcement of the lien is stayed pending such contest. Lender may require that Borrower post security for payment of such lien.

5. INSURANCE. Borrower shall obtain and maintain the following types of insurance upon and relating to the Property:

(a) "Special Form" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the full replacement value of the Property (with a deductible not to exceed \$10,000), naming Lender under a lender's loss payable endorsement naming Lender as mortgagee and loss payee and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;

(b) Commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and on an occurrence basis, insuring against personal injury, death and property damage and naming Lender as additional insured;

(c) Flood hazard insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Indebtedness, whichever is less if the Property is located in an area designated by the Federal Emergency Management Act or is hereafter designated or identified as an area having



special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance;

(d) Boiler and machinery coverage for mechanical and electrical failure; and

(e) Such other types of insurance or endorsements to existing insurance as may be required from time to time by Lender in accordance with its standard commercial lending practices for similar properties and transactions.

Upon the request of Lender, Borrower shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with Lender's standard commercial lending practices for similar properties and transactions. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and having a Best's Financial Strength Rating of B++ or better as determined and published by A.M. Best Company, and shall be in form acceptable to Lender. Certificates of all insurance required to be maintained hereunder shall be delivered to Lender prior to or contemporaneously with Borrower's execution of this Instrument. All such certificates shall be in form acceptable to Lender and shall require the insurance company to give to Lender at least thirty (30) days' prior written notice before canceling the policy for any reason or materially amending it. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to Lender at least fifteen (15) days before termination of the policies being renewed or substituted. If any loss shall occur at any time when Borrower shall be in default hereunder, Lender shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to Lender, and upon foreclosure hereunder, Lender shall become the owner thereof. Lender shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same.

If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or destruction of the Property (such event being called a "Loss"), Borrower will give prompt written notice thereof to Lender. If no Event of Default has occurred hereunder and is continuing, Lender shall apply all such insurance proceeds to the restoration, replacement and rebuilding of the damaged portion of the Property, and such restoration, replacement and rebuilding shall be accomplished, upon satisfaction of each and all of the following conditions: (i) except as provided in (ii) below, Lender shall be satisfied that by the expenditure of such insurance proceeds the Property will be fully restored within a reasonable period of time to its value immediately preceding the loss or damage, free and clear of all liens, except the lien of this Instrument and such other liens as are specifically approved by Lender in writing under this Instrument; (ii) in the event such proceeds shall be insufficient to restore or rebuild the Property, Borrower shall deposit promptly with Lender funds which, together with the insurance proceeds, shall be sufficient in Lender's judgment to restore and rebuild the Property; (iii) Borrower shall make reasonable efforts to obtain a waiver of the right of subrogation from any insurer under such policies of insurance who, at that time, claims that no liability exists as to Borrower or the then owner or the assured under such policies; (iv) the excess of such insurance proceeds above the amount necessary to complete such restoration and compensate Borrower for



all other insured losses shall be applied on account of the Indebtedness (first to interest, then to expenses reimbursable to Lender and then to principal amounts falling due under the Note (as defined in the Note)); (v) Lender reviews and approves in writing the plans and specifications for the restoration work and Lender receives written evidence satisfactory to Lender that the same have been approved by all governmental authorities having jurisdiction; (vi) Borrower shall have furnished to Lender, for Lender's approval, a detailed budget and cost breakdown for said restoration work signed by Borrower and describing the nature and type of expenses and amounts thereof estimated by Borrower for said restoration work including, but not limited to, the cost of material and supplies, architect and designer fees, general contractor's fees, and the anticipated monthly disbursement schedule, and Lender shall have given to Borrower written approval of such budget and cost breakdown (if Borrower determines at any time that its actual expenses differ or will differ from its estimated budget, it will so advise Lender promptly); (vii) Borrower has delivered to Lender evidence satisfactory to Lender that all Leases existing at the time of the Loss will remain in full force and effect subject only to abatement of rent in accordance with the terms of the Leases until completion of such repair and restoration; and (viii) in Lender's reasonable judgment, such restoration work can be completed at least six (6) months prior to the maturity of the Note.

In the event any of such conditions are not or cannot be satisfied, then all of the insurance proceeds payable with respect to such Loss will be applied to the payment of the Indebtedness in such order as Lender may elect.

Under no circumstances shall Lender become obligated to take any action to restore the Property; all proceeds released or applied by Lender to the restoration of the Property pursuant to the provisions of this Section 5 shall be released and/or applied to the cost of restoration (including within the term "**restoration**" any repair, reconstruction or alteration) as such restoration progresses, in amounts which shall equal ninety percent (90%) of the amounts from time to time certified by an architect approved by Lender to have been incurred in such restoration of any and all of the Property (i.e., 90% of the total amount expended by the contractor for the project under a contract approved by Lender and billed by the contractor to Borrower) and performed by a contractor reasonably satisfactory to Lender and who shall furnish such corporate surety bond, if any, as may be reasonably required by Lender in accordance with the plans and specifications therefor approved by Lender and the remaining ten percent (10%) upon completion of such restoration and delivery to Lender of evidence reasonably satisfactory to Lender that no mechanics' lien exists with respect to the work of such restoration; that the restoration work has been completed and fully paid for in accordance with plans and specifications for said work approved by Lender; and that all Leases existing at the time the Loss occurred are in full force and effect with all tenants in possession and paying full Lease rental; and that all governmental approvals required for the completion of said restoration work and occupancy of the Property have been obtained and the same are in form and substance satisfactory to Lender.

If within a reasonable period of time after the occurrence of any Loss, Borrower shall not have submitted to Lender and received Lender's approval of plans and specifications for the repair, restoration or rebuilding of such Loss or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Lender and by all such governmental authorities, Borrower shall fail to commence promptly such repair, restoration or rebuilding, or if thereafter Borrower fails to carry out diligently such repair, restoration or rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, or if any



other condition of this Section 5 is not satisfied within a reasonable period of time after the occurrence of any such Loss, then Lender may, in addition to all other rights herein set forth, at Lender's option, (A) declare that an Event of Default has occurred and/or apply all of the insurance proceeds payable with respect to such Loss to the payment of the Indebtedness in such order as Lender may elect, and/or (B) Lender, or any lawfully appointed receiver of the Property may at their respective options, perform or cause to be performed such repair, restoration or rebuilding, and may take such other steps as they deem advisable to carry out such repair, restoration or rebuilding, and may enter upon the Property for any of the foregoing purposes, and Borrower hereby waives, for itself and all others holding under it, any claim against Lender and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Lender or any such receiver) arising out of anything done by them or any of them pursuant to this Section 5 and Lender may in its discretion apply any proceeds held by it to reimburse itself and/or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including attorneys' fees, and any excess costs shall be paid by Borrower to Lender and Borrower's obligation to pay such excess costs shall be secured by the lien of this Instrument and shall bear interest at the Default Rate set forth in the Note, until paid.

Nothing herein, and no authority given to Borrower to repair, rebuild or restore the Property or any portion thereof, shall be deemed to constitute Borrower the agent of Lender for any purpose, or to create, either expressly or by implication, any liens or claims or rights on behalf of laborers, mechanics, materialmen or other lien holders which could in any way be superior to the lien or claim of Lender, or which could be construed as creating any third party rights of any kind or nature to the insurance funds. At reasonable times during the work of restoration, and upon reasonable notice, Lender, either personally or by duly authorized agents, shall have the right to enter upon the Property for inspection of the work. Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value of the Property from any casualty whatsoever, whether or not insurable or insured against.

Borrower waives any and all right to claim or recover against Lender or its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against under this Section 5.

6. PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS.

Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including all Improvements thereon, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) if all or part of the Property is for rent or lease, then Lender, at its option after the occurrence of an Event of Default, may require Borrower to provide for professional management of the Property by a property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, and (g) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in



and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender hereunder. Neither Borrower nor any tenant or other person, without the written approval of Lender, shall remove, demolish or alter any Improvement now existing or hereafter erected on the Premises or any Property, except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind. Borrower represents, warrants and covenants that the Property is and shall be in substantial compliance with the Americans with Disabilities Act of 1990 and all of the regulations promulgated thereunder, as the same may be amended from time to time.

7. USE OF PROPERTY. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not, without Lender's prior written consent, (i) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Property), (ii) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (iii) file any subdivision or parcel map affecting the Property, or (iv) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

8. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform any of the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in Section 5 hereof. Any amounts disbursed by Lender pursuant to this Section 8, with interest thereon, shall become additional Indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate (as defined in the Note). Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section 8 shall require Lender to incur any expense or take any action hereunder.

9. INSPECTION. Lender may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof. Except in case of emergency, such inspection shall be with reasonable prior notice and shall in any case be with due regard to the rights of renters.

10. FINANCIAL DATA. Borrower will furnish to Lender, and will cause any guarantor of the Indebtedness to furnish to Lender on request, within one hundred and twenty (120) days after the close of its fiscal year (i) annual balance sheet and profit and loss statements prepared in accordance with generally accepted accounting principles and practices consistently applied and, if Lender so requires, accompanied by the annual audit report of an independent certified public accountant reasonably acceptable to Lender, (ii) an annual operating statement, together with a complete rent roll and other supporting data reflecting all material information with respect



to the operation of the Property and Improvements, and (iii) all other financial information and reports that Lender may from time to time reasonably request, including, if Lender so requires, income tax returns of Borrower and any guarantor of any portion of the Indebtedness, and financial statements of any tenants designated by Lender.

11. **CONDEMNATION.** If the Property, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, (such event being called a "**Taking**") and if an Event of Default has not occurred hereunder and is not continuing, Lender shall apply all such proceeds to the restoration, replacement and rebuilding of the Property, and such restoration, replacement and rebuilding shall be accomplished, upon satisfaction of each and all of the following conditions: (i) except as provided in (ii) below, Lender shall be satisfied that by the expenditure of such proceeds the Property will be fully restored within a reasonable period of time to its value immediately preceding the Taking, free and clear of all liens, except the lien of this Instrument and such other liens as are specifically approved by Lender in writing under this Instrument; (ii) in the event such proceeds shall be insufficient to restore or rebuild the Property, Borrower shall deposit promptly with Lender funds which, together with the proceeds, shall be sufficient in Lender's judgment to restore and rebuild the Property; (iii) the excess of such proceeds above the amount necessary to complete such restoration and compensate Borrower for all other losses shall be applied on account of the Indebtedness (first to interest, then to expenses reimbursable to Lender and then to principal amounts falling due under the Note); (iv) Lender reviews and approves in writing the plans and specifications for the restoration work and Lender receives written evidence satisfactory to Lender that the same have been approved by all governmental authorities having jurisdiction; (v) Borrower shall have furnished to Lender, for Lender's approval, a detailed budget and cost breakdown for said restoration work signed by Borrower and describing the nature and type of expenses and amounts thereof estimated by Borrower for said restoration work including, but not limited to, the cost of material and supplies, architect and designer fees, general contractor's fees, and the anticipated monthly disbursement schedule, and Lender shall have given to Borrower written approval of such budget and cost breakdown (if Borrower determines at any time that its actual expenses differ or will differ from its estimated budget, it will so advise Lender promptly); (vi) Borrower has delivered to Lender evidence satisfactory to Lender that all Leases existing at the time of the Taking will remain in full force and effect subject only to abatement of rent in accordance with the terms of the Leases until completion of such repair and restoration; and (vii) in Lender's reasonable judgment, such restoration work can be completed at least six (6) months prior to the maturity of the Note.

In the event any of such conditions are not or cannot be satisfied, then all of the proceeds payable with respect to such Taking will be applied to the payment of the Indebtedness in such order as Lender may elect.

If within a reasonable period of time after the occurrence of any Taking, Borrower shall not have submitted to Lender and received Lender's approval of plans and specifications for the repair, restoration or rebuilding of the Property or shall not have obtained approval of such plans and specifications from all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Lender and by all such governmental authorities, Borrower shall fail to commence promptly such repair, restoration or rebuilding, or if thereafter Borrower fails to carry out diligently such repair, restoration or rebuilding or is delinquent in the



payment to mechanics, materialmen or others of the costs incurred in connection with such work, or if any other condition of this Section 11 is not satisfied within a reasonable period of time after the occurrence of any such Taking, then Lender may, in addition to all other rights herein set forth, at Lender's option, (A) declare that an Event of Default has occurred and/or apply all of the proceeds of the Taking to the payment of the Indebtedness in such order as Lender may elect, and/or (B) Lender, or any lawfully appointed receiver of the Property may at their respective options, perform or cause to be performed such repair, restoration or rebuilding, and may take such other steps as they deem advisable to carry out such repair, restoration or rebuilding, and may enter upon the Property for any of the foregoing purposes, and Borrower hereby waives, for itself and all others holding under it, any claim against Lender and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Lender or any such receiver) arising out of anything done by them or any of them pursuant to this Section 11 and Lender may in its discretion apply any proceeds held by it to reimburse itself and/or such receiver for all amounts expended or incurred by it in connection with the performance of such work, including attorneys' fees, and any excess costs shall be paid by Borrower to Lender and Borrower's obligation to pay such excess costs shall be secured by the lien of this Instrument and shall bear interest at the Default Rate set forth in the Note, until paid.

Under no circumstances shall Lender become obligated to take any action to restore the Property. Nothing herein, and no authority given to Borrower to repair, rebuild or restore the Property or any portion thereof, shall be deemed to constitute Borrower the agent of Lender for any purpose, or to create, either expressly or by implication, any liens or claims or rights on behalf of laborers, mechanics, materialmen or other lien holders which could in any way be superior to the lien or claim of Lender, or which could be construed as creating any third party rights of any kind or nature to the proceeds. At reasonable times during the work of restoration, and upon reasonable notice, Lender, either personally or by duly authorized agents, shall have the right to enter upon the Property for inspection of the work. Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value of the Property from any casualty whatsoever, whether or not insurable or insured against.

12. BORROWER AND LIEN NOT RELEASED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding the occurrence of an Event of Default, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness (including but not limited to any guarantor, accept an extension or modification or renewal note therefore, modify the terms and time of payment of the Indebtedness, enter into a loan modification agreement with Borrower, release from the lien of this Instrument any part of the Property, accept or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Section 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness, and shall not affect the lien or priority of the lien hereof on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance



premiums and attorneys' fees as may be incurred at Lender's option (based on Lender's then-current fee schedule for such matters), for any such action if taken at Borrower's request or for other servicing requests, including but not limited to name changes, prepayments of the Indebtedness, and loan pay off statement requests. Such service change is exclusive of any legal fees which may be incurred by Lender in connection with Borrower's request.

13. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under Sections 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and conveys to Lender a first and prior security interest in all of the Property that constitutes personal property ("**Collateral**", for purposes of this Section 14), whether now owned or hereafter acquired. Borrower agrees that Lender may file this 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 Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Lender may submit for filing any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may deem appropriate to perfect a security interest with respect to the foregoing items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Lender may require.

Borrower expressly warrants and covenants:

- (a) Except for the security interest granted hereby, Borrower is the owner of the Collateral free from any lien, security interest or encumbrance. Borrower understands that any further encumbrance of the Collateral is prohibited. Borrower shall defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.
- (b) The Collateral is used or bought primarily for use in the business of Borrower.
- (c) Borrower's business address is as stated above. The Collateral is located at or on or is used or owned for or in connection with the Premises and other Property.
- (d) Borrower shall promptly notify Lender of any change in the location of the Collateral or any change in Borrower's principal place of business.



(e) Borrower shall pay when due, prior to delinquency, all taxes and assessments of every nature which may be levied or assessed against the Collateral.

(f) Except for liens in favor of Lender, without Lender's prior written consent, Borrower shall not permit or allow any lien, security interest or encumbrance whatsoever upon the Collateral and shall not permit the Collateral to be attached or replevied. Lender's consent to a junior lien by an entity owned by, or under common control with, Lender shall not be unreasonably withheld.

(g) The Collateral is in good condition and Borrower shall keep the Collateral in good condition (reasonable wear and tear excepted) and from time to time, forthwith, replace and repair all such parts of the Collateral as may be broken, worn out, or damaged without allowing any lien to be created upon the Collateral on account of such replacement or repairs. Lender may examine and inspect the Collateral at any time, wherever located, subject to reasonable prior notice.

(h) Borrower will not use the Collateral in violation of any applicable statutes, regulations or ordinances.

(i) Notwithstanding anything else contained herein to the contrary, if any personal property for use on the Property will be leased to Borrower, Lender's interest therein shall be subordinate to lessor's interest therein.

Until the occurrence of an Event of Default, Borrower may have possession of the Collateral and use it in any lawful manner, and upon the occurrence of an Event of Default Lender shall have the immediate right to the possession of the Collateral.

Upon the occurrence of an Event of Default, Lender shall have the remedies of a secured party under the Uniform Commercial Code, and Lender may also invoke the remedies provided in Section 25 of this Instrument as to such items. In exercising any of said remedies Lender may proceed against the items of real property and any items of Collateral specified above separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in Section 25 of this Instrument. Within ten (10) days following any request therefor by Lender, Borrower shall prepare and deliver to Lender a written inventory specifically listing all of the Collateral covered by the security interest herein granted, which inventory shall be certified by Borrower as being true, correct, and complete.

15. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

16. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; SUBORDINATE FINANCING PROHIBITED; ASSUMPTION. Lender may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by Section 25 of this Instrument, if title to the Property is changed without the prior written consent of Lender, which consent shall be at Lender's sole discretion. Any transfer of any interest in the Property or in the income there from,



by sale, lease, contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property), and any change in the ownership interests in Borrower (including any transfer, pledge, assignment, or hypothecation of, or other change in the ownership interests of any legal entities which comprise or control Borrower), shall be considered a change of title, except transfers and changes in ownership by devise or descent. Notwithstanding the foregoing, additional but subordinate deeds of trust may be granted, subject to the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

Lender shall have the right to condition its consent to any proposed sale or transfer described in this Section 16 upon, among other things, Lender's approval of the transferee's creditworthiness and management ability, and the transferee's execution, prior to the sale or transfer, of a written assumption agreement containing such terms as Lender may require, including, if required by Lender, the imposition of an assumption fee of one percent (1%) of the then outstanding balance of the Indebtedness. Consent by Lender to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of this Section 16. No transfer by Borrower shall relieve Borrower of liability for payment of the Indebtedness, unless Lender shall otherwise agree in writing at the time of such transfer. Borrower shall pay any recording tax, recording cost, title insurance premium, attorneys' fees, or other third-party expenses incurred by Lender in connection with any transfer, whether or not consent is required. No transfer will affect any guarantor's obligations with respect to the Loan.

The transfer to and assumption by an approved transferee of the Borrower's obligations under the Loan shall not constitute a "prepayment" of the Loan.

17. NOTICE. Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Instrument or under the Note shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by certified, or Express United States mail, postage prepaid, or by Federal Express or similar nationally recognized delivery service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of sending via overnight delivery by Express Mail, Federal Express, or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal by or on behalf of the addressee upon presentation for delivery of a properly addressed notice).

18. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of Lender and Borrower, subject to the provisions of Section 16 hereof. If Borrower is comprised of more than one person or entity, whether as individuals, partners, partnerships, limited liability companies, or corporations, each such person or entity shall be jointly and severally liable for Borrower's obligations hereunder. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized



by Lender. The captions and headings of the sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

19. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

20. WAIVER OF MARSHALLING. Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all (i) of the Property shall be subjected to the remedies provided herein or (ii) portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

21. HAZARDOUS WASTE. Borrower has received no notification of any kind suggesting that the Property or any adjacent property is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Borrower further represents and warrants that to the best of its knowledge as of the date hereof, there are no hazardous waste or materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials, except for reasonable quantities of ordinary office supplies, cleaning supplies, insecticides, pesticides, and paint used in the normal operation and maintenance of the Property, provided that the same are used, stored, handled, and disposed of in accordance with applicable laws ("**Permitted Substances**"). As used herein, the term "**hazardous waste or materials**" includes any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Borrower shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property, or incorporated in any Improvements, at Borrower's expense. In the event that Lender at any time has reason to believe that the Property is not free of all hazardous waste or materials other than Permitted Substances or that Borrower has violated any applicable environmental law with respect to the Property, then immediately, upon request by Lender, Borrower shall promptly order, diligently pursue obtaining and furnish to Lender, at Borrower's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to Lender. In the event that Borrower fails to immediately obtain such audit or inspection, Lender or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense. Lender may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property; and whether or not Borrower has actual knowledge of the existence of hazardous waste or materials on the Property or any adjacent property as of the date hereof, Borrower shall reimburse Lender



as provided in Section 22 below for the full amount of all costs and expenses incurred by Lender prior to Lender acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any of the other Loan Documents shall operate to put Lender in the position of an owner of the Property prior to any acquisition of the Property by Lender. The rights granted to Lender herein and in the other Loan Documents are granted solely for the protection of Lender's lien and security interest covering the Property, and do not grant to Lender the right to control Borrower's actions, decisions or policies regarding hazardous waste or materials.

22. ADVANCES, COSTS AND EXPENSES. Borrower shall pay within ten (10) days after written demand from Lender all sums advanced by Lender and all costs and expenses incurred by Lender in taking any actions pursuant to the Loan Documents including attorneys' fees and disbursements, accountants' fees, appraisal and inspection fees and the costs for title reports and guaranties, together with interest thereon at the rate applicable under the Note after an Event of Default from the date such costs were advanced or incurred. All such costs and expenses incurred by Lender, and advances made, shall constitute advances under this Instrument to protect the Property and shall be secured by and have the same priority as the lien of this Instrument. If Borrower fails to pay any such advances, costs and expenses and interest thereon, Lender may apply any undisbursed loan proceeds to pay the same, and, without foreclosing the lien of this Instrument, may at its option commence an independent action against Borrower for the recovery of the costs, expenses and/or advances, with interest, together with costs of suit, costs of title reports and guaranty of title, disbursements of counsel and reasonable attorneys' fees incurred therein or in any appeal therefrom. If any check delivered by or on behalf of Borrower in payment of any monthly installment due on the Indebtedness or any other payment due hereunder shall be returned on account of insufficient funds, or if Lender is unable to debit Borrower's account for such payment in accordance with previously agreed automated funds withdrawal mechanism, Borrower shall pay a service charge in accordance with Lender's current fee schedule.

23. ASSIGNMENT OF LEASES AND RENTS. Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of Borrower in and to all Rents, including room Rents, of the Property, whether now in existence or hereafter entered into which may now or hereafter be or become due or owing, and any of them, or on account of the use of the Property. The assignment made hereunder is an absolute, present assignment from Borrower to Lender, effective immediately, and is not merely an assignment for security purposes but is irrevocable by Borrower so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a notice is sent to the Borrower in writing that an Event of Default (as defined below) has occurred under the terms and conditions of the Note or any instrument constituting security for the Note (which notice is hereafter called a "**Notice**"), Borrower is granted a license to receive, collect and enjoy the Rents accruing from the Property.

If an Event of Default shall occur, Lender may, at its option, after service of a Notice, receive and collect all such Rents as they become due, from the Property. Lender shall thereafter continue to receive and collect all such Rents, until Lender shall otherwise agree in writing. All sums received by Borrower after service of such Notice shall be deemed received in trust and shall be immediately turned over to Lender.



Borrower hereby irrevocably appoints Lender its true and lawful attorney-in-fact with power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Borrower, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all Rents accruing from the Property, either in its own name or in the name of Borrower or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the Rents and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such Rents. Such appointment is coupled with an interest and is irrevocable. Lender shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss is found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Lender.

Lender shall apply the Rents received from Borrower's rental agreements, to accrued interest and principal under the Note. If no Event of Default remains uncured, amounts received in excess of the aggregate monthly payment due under the Note shall be remitted to Borrower in a timely manner. Nothing contained herein shall be construed to constitute Lender as a mortgagee-in-possession in absence of its physically taking possession of the Property.

If an Event of Default shall occur, Lender is hereby vested with full power from and after service of a Notice to use all measures, legal and equitable, deemed by it necessary or proper to enforce the assignment granted hereunder and to collect the Rents assigned hereunder, including the right of Lender or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to Lender to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the Rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Borrower to Lender, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Improvements on the Premises or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of the assignment granted hereunder, and of principal and interest payments due from Borrower to Lender on the Note and this Instrument, all in such order as Lender may determine. Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the renter under any of the room rental agreements and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the room rental agreements. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any of the terms and conditions of any of the room rental agreements, or for any waste of the Property by any renter under any of the room rental agreements or any other person, 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 or injury or death to any renter, licensee, employee or stranger, unless the same shall have been found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Lender.



24. DEFAULT. The following shall each constitute an event of default ("**Event of Default**"):

(a) The occurrence of an "Event of Default" under the Note.

(b) Failure of Borrower within the time required by this Instrument to make any payment for taxes, insurance or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien, and such failure shall continue for a period of ten (10) days after written notice is given to Borrower by Lender specifying such failure.

(c) Failure by Borrower or any guarantor of the Loan to observe or perform its obligations to Lender on or with respect to any transactions, debts, undertakings or agreements other than the transaction evidenced by the Note, following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby.

(d) Failure of Borrower to make any payment or perform any obligation under any superior liens or encumbrances on the Property, within the time required thereunder, or commencement of any suit or other action to foreclose any superior liens or encumbrances.

(e) The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever is made or entered into without the prior written consent of Lender, except as specifically allowed under this Instrument, including without limitation creating or allowing any liens on the Property or leasing any portion of the Property.

(f) Filing by Borrower of a voluntary petition in bankruptcy or filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for Borrower, any part of the Property, or any of the Rents of the Property, or the making by Borrower of any general assignment for the benefit of creditors, or the inability of or failure by Borrower to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of Borrower, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by Borrower of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of Borrower which is not discharged in the manner permitted by Section 4 of this Instrument, or the giving of notice by Borrower to any governmental body of insolvency or suspension of operations.

(g) Filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of any part of the Property or of any of the Rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition.



(h) The institution of any proceeding for the dissolution or termination of Borrower voluntarily, involuntarily, or by operation of law, unless such proceeding shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree for relief, or the death or incompetence of Borrower.

(i) A material adverse change occurs in the assets, liabilities or net worth of Borrower from the assets, liabilities or net worth of Borrower previously disclosed to Lender.

(j) Any warranty, representation or statement furnished to Lender by or on behalf of Borrower under the Note, this Instrument, any of the other Loan Documents or the Indemnity, shall prove to have been false or misleading in any material respect when made.

(k) Failure of Borrower to observe or perform any other covenant or condition contained herein and such default shall continue for thirty (30) days after notice is given to Borrower specifying the nature of the failure, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions; provided, however, that no notice of default and no opportunity to cure shall be required with respect to defaults under Section 16 hereof or if during the prior twelve (12) months Lender has already sent more than one (1) notice to Borrower concerning default in performance of the same obligation.

(l) Failure of Borrower to observe or perform any other obligation under any other Loan Document when such observance or performance is due, and such failure shall continue beyond the applicable cure period set forth in such Loan Document, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions. No notice of default and no opportunity to cure shall be required if during the prior twelve (12) months Lender has already sent more than one (1) notice to Borrower concerning default in performance of the same obligation.

(m) Borrower's abandonment of the Property.

(n) Any of the events specified in (f) - (j) above shall occur with respect to any guarantor of any of Borrower's obligations or such guarantor dies or is declared legally incompetent and not replaced by a new guarantor acceptable to Lender within ninety (90) days thereafter.

25. RIGHTS AND REMEDIES ON DEFAULT.

25.1 Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

(a) Lender may declare all sums secured by this Instrument immediately due and payable.



(b) The Trustee shall have the right to default on the Note or Deed of Trust by notice of default or foreclosure and sale, or Lender shall have the right to default on the Note or Deed of Trust by notice of default or foreclosure and sale, in either case in accordance with applicable law.

(c) In the event of any default or foreclosure, to the extent permitted by applicable law, Lender will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the obligations secured by this Instrument exceeds the net sale proceeds payable to Lender.

(d) With respect to all or any part of the Property that constitutes personal property, Lender shall have all rights and remedies of a secured party under the Uniform Commercial Code.

(e) Lender shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect all the Rents from the Property and apply the proceeds, over and above cost of the receivership, against the sums due under this Instrument, and to exercise all of the rights with respect to the Property described in Section 23 above. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the sums due under this Instrument by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

(f) In the event Borrower remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower, Borrower shall become a tenant at will of Lender or the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Borrower's possession.

(g) Trustee and Lender shall have any other right or remedy provided in this Instrument, the Note, or any other Loan Document or instrument delivered by Borrower in connection therewith, or available at law, in equity or otherwise.

(h) Lender shall have all the rights and remedies set forth in Sections 22 and 23.

25.2 Sale of the Property. In exercising its rights and remedies, the Trustee or Lender may, at Lender's sole discretion, cause all or any part of the Property to be sold as a whole or in portions without selling other portions. Lender may bid at any public sale on all or any portion of the Property.

(a) If at the time of the sale the said Trustee, or the one acting, shall deem it best for any reason to postpone or continue said sale for one or more days, said Trustee may do so, in which event notice of such postponement or continuance shall be made in such manner as the Trustee, or the one acting, may deem sufficient under the laws of the State of Nevada.



(b) At any such public sale, Trustee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple with special warranty and, to this end, Borrower hereby constitutes and appoints Trustee the agent and attorney-in-fact of Borrower to make such sale and conveyance, and thereby to divest Borrower of all right, title or equity that Borrower may have in and to the Property and to vest the same in the purchaser or purchasers at such sale or sales. Said appointment is coupled with an interest and shall be irrevocable.

(c) Upon any public sale pursuant to the aforementioned power of sale and agency, the proceeds of said sale shall be applied as provided by law. In the event that such proceeds are insufficient to pay all costs and expenses of sale, Lender may advance such sums as it in its sole and absolute discretion shall determine for the purpose of paying all or any part of such costs and expenses, and all such sums shall be a part of the Indebtedness, payable on demand with interest at the Default Rate provided in the Note. Borrower shall remain liable for any deficiency resulting if the proceeds of sale are inadequate to repay the Indebtedness.

25.3 Notice of Sale. Lender shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given in accordance with applicable law, including notices given in the manner and at the times required for notices in a nonjudicial foreclosure.

25.4 Waiver; Election of Remedies. A waiver by either party of a breach of a provision of this Instrument shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Lender under this Instrument are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and exercise its remedies under this Instrument.

26. RECONVEYANCE. Upon payment of all sums secured by this Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's costs incurred in so reconveying the Property.

27. PROVISIONS REGARDING TRUSTEE. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder.



28. Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to exercise its powers hereunder when requested by Lender so to do, or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Upon appointment by Lender and upon recording of the substitution in the land records of Douglas County, Nevada, any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

29. USE OF PROPERTY. The Property is not currently used for residential, agricultural, farming, timber or grazing purposes. Borrower warrants that this Instrument is and will at all times constitute a commercial trust deed, as defined under appropriate state law.

30. ATTORNEYS' FEES. In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, title insurance, trustee fees, and other attorney fees, incurred by Lender that are necessary at any time in Lender's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note. The term "**attorneys' fees**" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.

31. GOVERNING LAW; SEVERABILITY. This Instrument shall be governed by the law of the State of Nevada applicable to contracts made and to be performed therein (excluding choice-of-law principles). In the event that any provision or clause of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Instrument and the Note is declared to be severable.

32. TIME OF ESSENCE. Time is of the essence of this Instrument.

33. CHANGES IN WRITING. This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or Lender relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

34. NO OFFSET. Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note shall be



absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Borrower or any guarantor may have or claim against Lender or any entity participating in making the loan secured hereby. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against Lender or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Lender.

35. **WAIVER OF JURY TRIAL:** THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVES ANY AND ALL RIGHTS THAT EACH PARTY TO THIS INSTRUMENT MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR THE STATE OF NEVADA, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT, THE LOAN DOCUMENTS OR ANY TRANSACTIONS CONTEMPLATED THEREBY OR RELATED THERETO. IT IS INTENDED THAT THIS WAIVER SHALL APPLY TO ANY AND ALL DEFENSES, RIGHTS, CLAIMS AND/OR COUNTERCLAIMS IN ANY SUCH ACTION OR PROCEEDING.

BORROWER UNDERSTANDS THAT THIS WAIVER IS A WAIVER OF A CONSTITUTIONAL SAFEGUARD, AND EACH PARTY INDIVIDUALLY BELIEVES THAT THERE ARE SUFFICIENT ALTERNATE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS, INCLUDING, A TRIAL BY AN IMPARTIAL JUDGE, THAT ADEQUATELY OFFSET THE WAIVER CONTAINED HEREIN.

36. **FIXTURE FILING.** Portions of the Collateral are goods which are or are to become fixtures relating to the Property, and Borrower covenants and agrees that the filing of this Instrument in the real estate records of the county where the Property is located shall also operate from the time of filing as a fixture filing in accordance with NRS 104.9502.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed under seal by its representatives thereunto duly authorized.

BORROWER:

MINDEN HOSPITALITY, INC
a Nevada corporation

By: Rikki A.K. Mann
Rikki A.K. Mann, President

Dated: May 3, 2013

EXHIBITS:

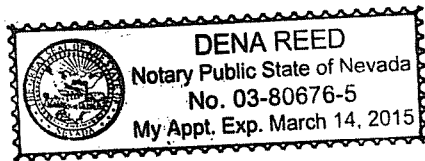
Exhibit A - Description of Property



STATE OF NEVADA)
) ss.
CARSON CITY)

On the 3rd day of May 2013, before me, a Notary Public in and for the State of Nevada, personally appeared Rikki Mann, the President of Minden Hospitality, Inc , a Nevada corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and he acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.



Dena Reed

Signature

Dena Reed

Print Name

NOTARY PUBLIC in and for the State of Nevada.

My commission expires 3-14-15



EXHIBIT A

(1795 Ironwood Drive, Minden, NV 89423)
A.P.N. 1320-30-211-094

All that certain real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of Section 30, Township 13 North, Range 20 East, Mount Diablo Baseline and Meridian, Douglas County, Nevada, described as follows:

Commencing at the Southwest corner of Parcel No. 4 as shown on the Parcel Map of Minden Ironwood Partners and recorded in Book 990, at Page 341, as Document No. 233981, Douglas County, Nevada, Recorders Office; thence North 00°18'00" East, 922.12 feet to THE POINT OF BEGINNING; thence continuing North 00°18'00" East, 280.00 feet; thence along the arc of the curve to the right having a delta angle of 90°00'00", radius of 20.00 feet and an arc length of 31.42 feet; thence South 89°42'00" East, 281.41 feet; thence South 125°7'23" West, 234.62 feet; thence South 00°18'00" West, 35.09 feet; thence North 89°52'42" West, 144.46 feet; thence South 45°18'00" West, 50.26 feet; thence North 89°42'00" West, 70.00 feet to THE POINT OF BEGINNING.

Reference is made to Adjusted Parcel 2 as set forth on Record of Survey for Minden Ironwood Partners filed for record in the office of the County Recorder of Douglas County, State of Nevada, on September 10, 1990 in Book 990, at Page 969, as Document No. 234225.

Note: Legal Description previously contained in Document No. 483279, recorded December 23, 1999, in Book 1299, Page 4606, Official Records of Douglas County, State of Nevada.