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**LION ES HOTELS HOLDINGS, LLC**, as mortgagor  
(Individual Borrower)

and

**LES HOTEL LESSEE, LLC**, as operating lessee and a mortgagor (Operating Lessee)

To

**BANK OF AMERICA, N.A.**, a national banking association, as mortgagee  
(Mortgagee)

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

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**DATED:** As of August 13, 2012

**LOCATION:** Residence Inn Birmingham Inverness  
3 Greenhill Parkway at U.S. Highway 280  
Birmingham, Alabama

**COUNTY:** Shelby

**THIS INSTRUMENT WAS PREPARED BY ~~XXXXXXXXXX~~**  
**~~RECORDATION RETURN TO:~~**

Cadwalader, Wickersham & Taft LLP  
227 W. Trade Street, Suite 2400  
Charlotte, North Carolina 28202

**ATTENTION:** James P. Carroll, Esq.

Return to:  
Zonia N. Veal  
First National Financial Title Services, Inc.  
3237 Satellite Blvd, Bldg 300, Ste 450  
Duluth, GA 30096

File No. H 7553-H

THIS FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of this 13<sup>th</sup> day of August, 2012,, by **LION ES HOTELS HOLDINGS, LLC**, a Delaware limited liability company, having its principal place of business at c/o Clarion Partners, 2650 Cedar Springs Road, Suite 850, Dallas, Texas 75201 as a mortgagor ("Individual Borrower") and **LES HOTEL LESSEE, LLC**, a Delaware limited liability company having its principal place of business at c/o Clarion Partners, 2650 Cedar Springs Road, Suite 850, Dallas, Texas 75201, as a mortgagor ("Operating Lessee"; Individual Borrower and Operating Lessee sometimes hereinafter, collectively, the "Mortgagor") to **BANK OF AMERICA, N.A.**, a national banking association, having its principal place of business at 214 North Tryon Street, Charlotte, North Carolina 28255 ("Mortgagee"). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

RECITALS:

**WHEREAS**, this Security Instrument is given to Mortgagee to secure a loan (the "Loan") in the principal sum of Three Hundred Thirty Five Million and No/100 Dollars (\$335,000,000.00) advanced pursuant to that certain Loan Agreement, dated as of the date hereof, between Individual Borrower, those certain other affiliates of the Individual Borrower named therein (collectively, the "Other Borrowers"; the Other Borrowers, together with the Individual Borrower may be hereinafter referred to as, collectively, the "Borrower"), Operating Lessee and Mortgagee, among others (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by that certain Consolidated, Amended and Restated Promissory Note, dated as of the date hereof, made by Borrower in favor of Mortgagee (such Consolidated, Amended and Restated Promissory Note, together with all extensions, renewals, replacements, restatements or modifications thereof, being hereinafter referred to as the "Note");

**WHEREAS**, Operating Lessee and Individual Borrower have entered into that certain Lease Agreement, dated as of May 23, 2007 (as the same may be amended, modified, supplemented, and amended and restated from time to time, the "Operating Lease") pursuant to which Operating Lessee has agreed to lease and operate the Property;

**WHEREAS**, Operating Lessee has entered into that certain Management Agreement dated as of May 23, 2007 with Residence Inn by Marriott, LLC (the "Hotel Manager") pursuant to which Hotel Manager manages the Property;

**WHEREAS**, Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) in the maximum principal amount outstanding at any time of Three Hundred Thirty Five Million and No/100 Dollars (\$335,000,000.00) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement);



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**WHEREAS**, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby; and

**WHEREAS**, Operating Lessee has given this Security Instrument and executed various other Loan Documents in order to induce Mortgagee to make the Loan to Borrower.

**NOW THEREFORE**, in consideration of the making of the Loan by Mortgagee and the covenants, agreements, representations and warranties set forth in this Security Instrument:

## **ARTICLE 1**

### **GRANTS OF SECURITY**

Section 1.1 Property Mortgaged. Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Mortgagee and its successors and assigns all of Mortgagor's right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "Property"):

(a) Fee Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Fee Land");

(b) Operating Lease. All of Operating Lessee's estate, right, title and interest in, and under the Operating Lease and the leasehold estate created thereby in the real property leased thereby (the "Leasehold Land"), together with all buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs and replacements now or hereafter erected on the Leasehold Land and together with all appurtenances including, but not limited to (i) extension, renewal, modification and option rights, and all of the estate and right of Operating Lessee of, in, and to the Leasehold Land under and by virtue of the Operating Lease, (ii) all credits to and deposits of Operating Lessee under the Operating Lease and all other options, privileges and rights granted and demised to Operating Lessee under the Operating Lease and (iii) all the right or privilege of Operating Lessee to terminate, cancel, surrender or merge the Operating Lease;

(c) Additional Land. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Fee Land and Leasehold Land and the development of the Fee Land and Leasehold Land (the Fee Land and the Leasehold Land being hereinafter collectively referred to as the "Land") and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(d) Improvements. The buildings, structures, fixtures, pads, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "Improvements"). Notwithstanding the foregoing, "Improvements" shall not include any property belonging to tenants under Leases



(defined below) or belonging to the Hotel Manager, except to the extent that the Mortgagor shall have any right or interest therein;

(e) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(f) Fixtures and Personal Property. All machinery, equipment, software, franchises, furniture and fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications, elevator fixtures, 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, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, fire prevention and extinguishing apparatus, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers) and other customary hotel equipment and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, whether tangible or intangible, including, without limitation, "Inventories of Merchandise" and "Inventories of Supplies" as defined in the Uniform Commercial Code, which are now or hereafter owned by Mortgagor and which are used in or to operate any of the foregoing and other property of every kind and nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Mortgagor, if any, in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), and all proceeds and products of the above. Notwithstanding the foregoing, "Personal Property" shall not include any property belonging to tenants under Leases (defined below) or belonging to the Hotel Manager, except to the extent that the Mortgagor shall have any right or interest therein;



(g) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, franchises, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of, the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under any Creditors Rights Laws (collectively, the “Leases”) and all right, title and interest, if any, of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents (including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance), moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor, Hotel Manager or any operator or manager of the hotel and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under any Creditors Rights Laws (and together with the Credit Card Receipts and Hotel Revenue described in sub-clauses (p) and (q) respectively of this Section 1.1, collectively, the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(h) Insurance Proceeds. All Insurance Proceeds in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Condemnation Awards. All Awards, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of Condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, 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;

(j) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(k) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(l) Agreements. To the extent assignable or transferable, all agreements, contracts, certificates, instruments, franchises, permits, licenses (including liquor licenses to the extent Mortgagor is permitted to do so pursuant to applicable laws), 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 Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder and all management, service, supply and maintenance contracts and agreements;

(m) Intangibles. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) Accounts. All reserves, escrows and deposit accounts maintained by Mortgagor with respect to the Property, including, without limitation, the Reserve Accounts, the Lockbox Account, the Cash Management Account and all accounts established pursuant to Article 10 of the Loan Agreement together with all deposits or wire transfers made to the Lockbox Account and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(o) Credit Card Receipts. All accounts and accounts receivable, including all present and future rights to payment from any consumer credit or charge card organization or entity (such as those organizations which sponsor or administer the American Express, Carte Blanche, Discover Card, Diners Club, Visa, Master Card and similar charge and credit cards) arising out of the leasing and operation of, or the business conducted at or in relation to, any of the Property;

(p) Hotel Revenue. All revenue and income received by or on behalf of Mortgagor or Manager resulting from the operation of the Property as a hotel, including all sums (i) paid by customers for the use of hotel rooms located within the Property, (ii) derived from food and beverage operations located within the Property (including, without limitation, from the sale of alcoholic beverages), (iii) generated by other hotel operations, including without



limitation any parking, convention, sports, banquet facilities, golf courses and recreational facilities and (iv) business interruption insurance proceeds;

(q) Hotel Accounts. All deposit, operating or other accounts including the entire balance therein (now or hereafter existing) maintained by or on behalf of Mortgagor (including any such account maintained by Manager on behalf of Mortgagor solely to the extent related to Manager's management and operation of the Property) with any other banking or financial institution, and all money, instruments, securities, documents, chattel paper, credits, demands, and any other property, rights, or interests of Mortgagor or Manager related to the Property which at any time shall come into the possession, custody or control of any other banking or financial institution;

(r) Hotel Books. All books, records and computer software (to the extent assignable or transferable) in which Mortgagor has an ownership or licensing interest concerning any of the foregoing;

(s) Franchise Agreement. The Franchise Agreement (as defined in the Loan Agreement) and the proceeds thereof (including distributions and other payments thereunder);

(t) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing items set forth in subsections (a) through (s) including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims; and

(u) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in subsections (a) through (t) above.

Section 1.2 Assignment of Rents. Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in and to all current and future Leases and Rents; it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement and Section 8.1(h) of this Security Instrument, Mortgagee grants to Mortgagor a revocable license to collect, receive, use and enjoy the Rents.

Section 1.3 Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Mortgagee, as security for the Obligations (hereinafter defined), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

Section 1.4 Fixture Filing. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.



Section 1.5 Conditions to Grant. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever, subject to the Permitted Encumbrances; PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, further, however, that Mortgagor's obligation to indemnify and hold harmless Mortgagee pursuant to the provisions hereof shall survive any such payment or release.

## ARTICLE 2

### DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "Other Obligations"): (a) all other obligations of Mortgagor contained herein; (b) each obligation of Mortgagor contained in the Loan Agreement and any other Loan Document; and (c) each obligation of Mortgagor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.3 Debt and other Obligations. Borrower's obligations for the payment of the Debt and Mortgagor's obligation for the performance of the Other Obligations shall be referred to collectively herein as the "Obligations."

Section 2.4 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

Section 2.5 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

## ARTICLE 3

### PROPERTY COVENANTS

Mortgagor covenants and agrees that:



Section 3.1 Insurance. Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Property as required pursuant to the Loan Agreement.

Section 3.2 Taxes. Mortgagor shall pay all Taxes and Other Charges assessed or imposed against the Property or any part thereof in accordance with the Loan Agreement.

Section 3.3 Leases. Mortgagor shall not enter into any Leases for all or any portion of the Property unless in accordance with the provisions of the Loan Agreement.

Section 3.4 Warranty of Title. Individual Borrower has good indefeasible fee simple title to the fee estate comprising part of the Property and good indefeasible title to the balance of the Property (not otherwise owned by Operating Lessee), free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Operating Lessee has good indefeasible leasehold title to the leasehold estate comprising part of the Property and good indefeasible title to the balance of the Property not otherwise owned by Individual Borrower, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Individual Borrower shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Mortgagee against the claims of all Persons whomsoever, subject to the Permitted Encumbrances.

Section 3.5 Payment for Labor and Materials. Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (subject to Mortgagor's right to contest the same in good faith in accordance with the terms of the Loan Agreement) and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests hereof except for the Permitted Encumbrances.

## ARTICLE 4

### FURTHER ASSURANCES

Section 4.1 Compliance with Loan Agreement. Mortgagor shall comply with the covenants set forth in Article 17 of the Loan Agreement in order to protect and perfect the Lien or security interest hereof upon, and in the interest of Mortgagee in, the Property.



Section 4.2 Authorization to File Financing Statements; Power of Attorney. Mortgagor hereby authorizes Mortgagee at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Personal Property. For purposes of such filings, Mortgagor agrees to furnish any information reasonably requested by Mortgagee promptly upon request by Mortgagee. Mortgagor also ratifies its authorization for Mortgagee to have filed any like initial financing statements, amendments thereto or continuation statements, if filed prior to the date of this Security Instrument. Mortgagor hereby irrevocably constitutes and appoints Mortgagee and any officer or agent of Mortgagee, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Mortgagor or in Mortgagor's own name to execute in Mortgagor's name any such documents and otherwise to carry out the purposes of this Section 4.2, to the extent that Mortgagor's authorization above is not sufficient. To the extent permitted by law, Mortgagor hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of this Section 4.2. This power of attorney is a power coupled with an interest and shall be irrevocable.

## ARTICLE 5

### DUE ON SALE/ENCUMBRANCE

Section 5.1 No Sale/Encumbrance. Mortgagor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, Mortgagor or any Restricted Party, other than in accordance with the provisions of Article 7 of the Loan Agreement, without the prior written consent of Mortgagee.

## ARTICLE 6

### PREPAYMENT; RELEASE OF PROPERTY

Section 6.1 Prepayment. The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

Section 6.2 Intentionally Omitted.

Section 6.3 Intentionally Omitted.

Section 6.4 Release of Property. Mortgagor shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in accordance with terms and conditions of the Loan Agreement.



## ARTICLE 7

### DEFAULT

Section 7.1 Event of Default. The term "Event of Default" as used in this Security Instrument shall have the meaning assigned to such term in the Loan Agreement.

## ARTICLE 8

### RIGHTS AND REMEDIES UPON DEFAULT

Section 8.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt



and without regard for the solvency of Mortgagor, Borrower Principal or any other Person liable for the payment of the Debt;

(h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and Mortgagee may, in all cases subject to Hotel Manager's rights under the applicable Management Agreement, enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees. Notwithstanding the foregoing, the license granted to the Mortgagor under Section 1.2 will be automatically reinstated upon a waiver or cure of the related Event of Default;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Mortgagor at its expense to assemble the Personal Property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personal Property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action shall constitute commercially reasonable notice to Mortgagor;

(j) subject to the terms of the Loan Agreement, apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv)



amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Mortgagee pursuant to the terms of this Security Instrument;

(k) subject to the terms of the Loan Agreement, surrender the Policies maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for the Policies and apply such sums as a credit on the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Mortgagor hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Mortgagor to collect such insurance premiums;

(l) subject to the terms of the Loan Agreement, apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Mortgagee may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 11.1(f) of the Loan Agreement shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Mortgagee.

Section 8.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper in accordance with the terms of the Note, the Loan Agreement and the other Loan Documents.

Section 8.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.3, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by



Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

Section 8.4 Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property.

Section 8.5 Recovery of Sums Required to be Paid. Subject to Article 15 of the Loan Agreement, Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

Section 8.6 Other Rights, etc. (a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Mortgagor, and Mortgagee shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured for the period of time prior to Mortgagee taking title to the Property by foreclosure or by deed-in-lieu thereof. Possession by Mortgagee shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Security Instrument. The rights of Mortgagee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.



Section 8.7 Right to Release any Portion of the Property. 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 lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and 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 lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 8.8 Right of Entry. Subject to the rights of Hotel Manager under the applicable Management Agreement, upon reasonable notice to Mortgagor, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times.

Section 8.9 Bankruptcy. (a) Upon or at any time after the occurrence of an Event of Default, Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Mortgagor a petition under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), and Mortgagor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Mortgagee not less than ten (10) days' prior notice of the date on which Mortgagor shall apply to the bankruptcy court for authority to reject the Lease. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such ten-day period a notice stating that (i) Mortgagee demands that Mortgagor assume and assign the Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of future performance under the Lease. If Mortgagee serves upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Mortgagee of the covenant provided for in clause (ii) of the preceding sentence.

Section 8.10 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Mortgagor's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.



## ARTICLE 9

### WAIVERS

Section 9.1 Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all Legal Requirements now or hereafter in force regarding appraisement, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Legal Requirements.

Section 9.2 Waiver of Notice. Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagor is not permitted by Legal Requirements to waive its right to receive notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

Section 9.3 Waiver of Statute of Limitations. Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 9.4 Sole Discretion of Mortgagee. Whenever pursuant to this Security Instrument, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Mortgagee and shall be final and conclusive.

Section 9.5 WAIVER OF TRIAL BY JURY. MORTGAGOR AND MORTGAGEE EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR AND MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF MORTGAGEE AND MORTGAGOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR AND MORTGAGEE.



Section 9.6 Waiver of Foreclosure Defense. Mortgagor hereby waives any defense Mortgagor might assert or have by reason of Mortgagee's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Mortgagee.

Section 9.7 Failure to Act. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the failure of Mortgagee to take any action hereunder or under any other Loan Document shall not (i) be deemed to be a waiver of any term or condition of this Security Instrument or any of the other Loan Documents, (ii) adversely effect any rights of Mortgagee hereunder or under any other Loan Document and (iii) relieve Mortgagor of any of Mortgagor's obligations hereunder or under any other Loan Document.

## ARTICLE 10

### EXCULPATION

Section 10.1 Exculpation. The provisions of Article 15 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

## ARTICLE 11

### NOTICES

Section 11.1 Notices. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Loan Agreement.

## ARTICLE 12

### APPLICABLE LAW

Section 12.1 Governing Law. THE PROVISIONS OF THIS SECURITY INSTRUMENT REGARDING THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS HEREIN GRANTED SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED. SUBJECT TO THE FOREGOING, IN ALL OTHER RESPECTS THIS SECURITY INSTRUMENT AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

Section 12.2 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the



exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## **ARTICLE 13**

### **DEFINITIONS**

Section 13.1 Defined Terms. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Individual Borrower" shall mean "each Individual Borrower and any subsequent permitted owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

## **ARTICLE 14**

### **MISCELLANEOUS PROVISIONS**

Section 14.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of (a) Mortgagee and its successors and assigns forever and (b) Mortgagor and its permitted successors and assigns forever.

Section 14.3 Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 14.4 Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.



Section 14.5 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 14.6 Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Mortgagor and Mortgagee are superseded by the terms of this Security Instrument and the other Loan Documents.

Section 14.7 Limitation on Mortgagee's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed on the Property by the tenants 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 tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession."

## ARTICLE 15

### STATUS OF PARTIES

Section 15.1 Status of Individual Borrower. Individual Borrower's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at the end of this Security Instrument. Individual Borrower is an organization of the type specified in the first paragraph of this Security Instrument. Borrower is incorporated in or organized under the laws of the state specified in the first paragraph of this Security Instrument. Individual Borrower's principal place of business and chief executive office, and the place where Individual Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Individual Borrower) the address of Individual Borrower set forth on the first page of this Security Instrument. Individual Borrower will not change or permit to be changed (a) Individual Borrower's name, (b) Individual Borrower's identity (including its trade name or names), (c) Individual Borrower's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Individual Borrower, (e) Individual Borrower's state of organization, or (f) Individual Borrower's organizational number, without notifying Mortgagee of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Individual Borrower's structure, without first obtaining the prior written consent of Mortgagee. If Individual Borrower does not now have an organizational identification number and later obtains one, Individual Borrower promptly shall notify the Mortgagee of such organizational identification number.

Section 15.2 Status of Operating Lessee. Operating Lessee's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at



the end of this Security Instrument. Operating Lessee is an organization of the type specified in the first paragraph of this Security Instrument. Operating Lessee is incorporated in or organized under the laws of the state specified in the first paragraph of this Security Instrument. Operating Lessee's principal place of business and chief executive office, and the place where Operating Lessee keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Operating Lessee) the address of Operating Lessee set forth on the first page of this Security Instrument. Operating Lessee will not change or permit to be changed (a) Operating Lessee's name, (b) Operating Lessee's identity (including its trade name or names), (c) Operating Lessee's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Operating Lessee, (e) Operating Lessee's state of organization, or (f) Operating Lessee's organizational number, without notifying Mortgagee of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Operating Lessee's structure, without first obtaining the prior written consent of Mortgagee. If Operating Lessee does not now have an organizational identification number and later obtains one, Operating Lessee promptly shall notify the Mortgagee of such organizational identification number.

## ARTICLE 16

### STATE-SPECIFIC PROVISIONS

Section 16.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 16 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2 Power of Sale. Mortgagor grants power to Mortgagee, in the event of the occurrence of an Event of Default, to sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee, is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The foregoing power of sale shall in no way impair or limit any remedies otherwise available to Mortgagee.

[NO FURTHER TEXT ON THIS PAGE]



IN WITNESS WHEREOF, this Security Instrument has been executed by Individual Borrower and Operating Lessee as of the day and year first above written.

**INDIVIDUAL BORROWER**

**LION ES HOTELS HOLDINGS, LLC**, a Delaware limited liability company

By: Lion ES Hotels Holdings GP, LLC, a Delaware limited liability company,  
its member

By: Lion ES Mezz Borrower, LLC, a Delaware limited liability company,  
its sole member


By: Lion ES Mezz Borrower II, LLC, a Delaware limited liability  
company, its sole member

By: Lion ES Mezz Borrower III, LLC, a Delaware limited  
liability company, its sole member

By: Lion ES Merger, LLC, a Delaware limited liability  
company, its sole member

By: Lion ES Management, LLC, a Delaware limited  
liability company, its manager

By: Clarion Partners, LLC, a New York  
limited liability company, its manager

By:   
Name: John M. Norris  
Title: Authorized Signatory



By: Lion ES Hotels Holdings Mezz Borrower, LLC, a Delaware limited liability company, its member

By: Lion ES Hotels Holdings Mezz Borrower II, LLC, a Delaware limited liability company, its sole member

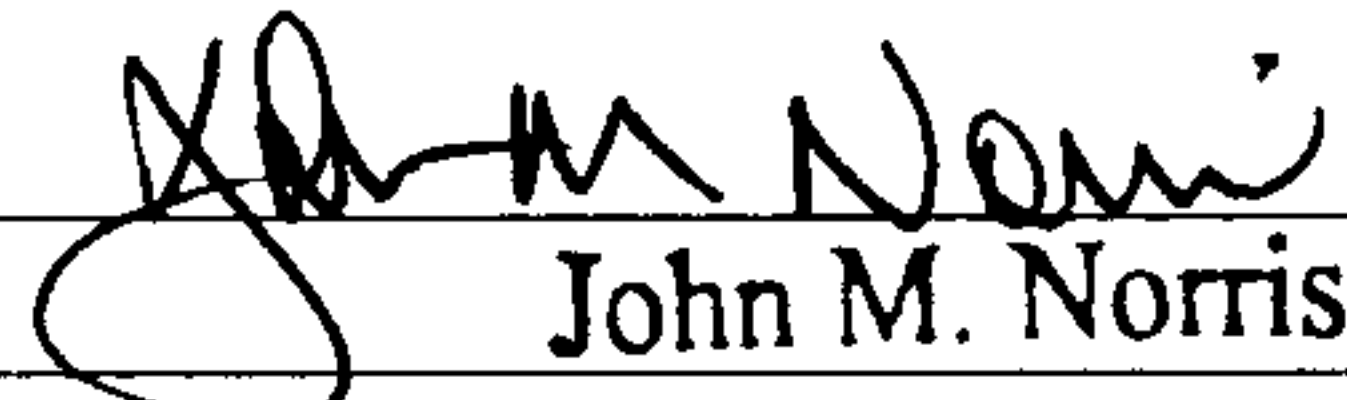
By: Lion ES Hotels Holdings Mezz Borrower III, LLC, a Delaware limited liability company, its sole member

By: Lion ES Hotels Holdings 2, LLC, a Delaware limited liability company, its sole member

By: Lion ES Merger, LLC, a Delaware limited liability company, its sole member

By: Lion ES Management, LLC, a Delaware limited liability company, its manager

By: Clarion Partners, LLC, a New York limited liability company, its manager

By:   
Name: John M. Norris  
Title: Authorized Signatory

Being all of the members of Lion ES Hotels Holdings, LLC



**OPERATING LESSEE:**

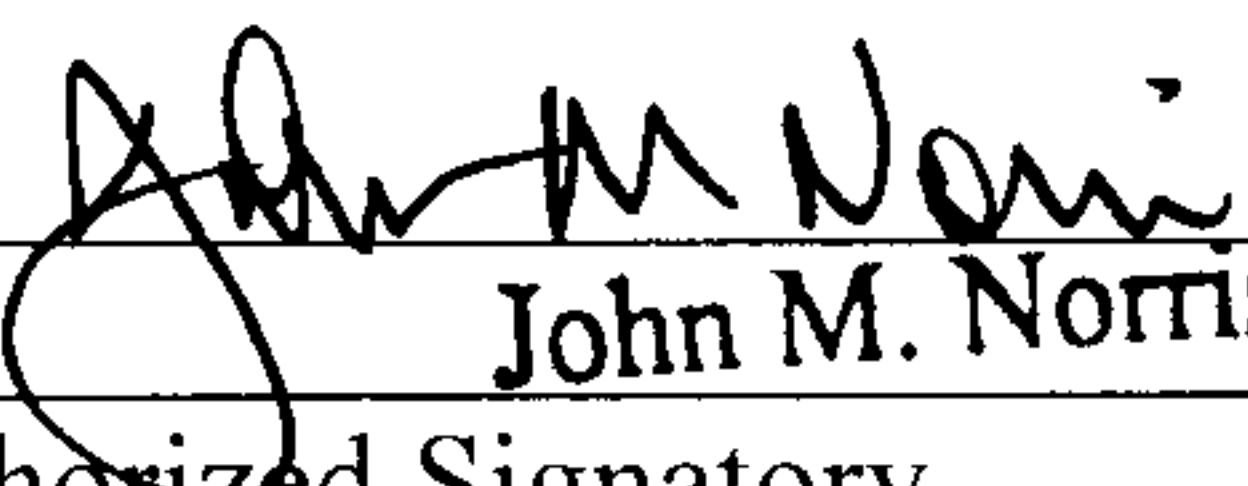
**LES HOTEL LESSEE, LLC**, a Delaware limited liability company

By: LES Hotel Lessee Holdings Pledgor, LLC, a Delaware limited liability company, its sole member

By: LES Hotel Lessee Holdings Mezz Pledgor, LLC, a Delaware limited liability company, its sole member

By: LES Hotel Lessee Holdings, LLC, a Delaware limited liability company, its sole member

By: Clarion Partners, LLC, a New York limited liability company, its manager

By:   
Name: John M. Norris  
Title: Authorized Signatory



STATE OF North Carolina )

COUNTY OF Mecklenburg )

I, Kimberly B. Van Herk, a Notary Public in and for said County in said State, hereby certify that John M. Harris, whose name as Authorized Signatory of Clarion Partners, LLC, a New York limited liability company, as the manager of Lion ES Management, LLC, a New York limited liability company, as the manager of Lion ES Merger, LLC, a Delaware limited liability company, as the sole member of Lion ES Mezz Borrower III, LLC, a Delaware limited liability company, as the sole member of Lion ES Mezz Borrower II, LLC, a Delaware limited liability company, as the sole member of Lion ES Mezz Borrower, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings GP, LLC, a Delaware limited liability company, as a member of **LION ES HOTELS HOLDINGS, LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Authorized Signatory, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as the manager of Lion ES Management, LLC, a Delaware limited liability company, as the manager of Lion ES Merger, LLC, a Delaware limited liability company, as the sole member of Lion ES Mezz Borrower III, LLC, a Delaware limited liability company, as the sole member of Lion ES Mezz Borrower II, LLC, a Delaware limited liability company, as the sole member of Lion ES Mezz Borrower, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings GP, LLC, a Delaware limited liability company, as a member of **LION ES HOTELS HOLDINGS, LLC**, a Delaware limited liability company as aforesaid; and further that John M. Harris, whose name as Authorized Signatory of Clarion Partners, LLC, a New York limited liability company, as the manager of Lion ES Management, LLC, a Delaware limited liability company, as the manager of Lion ES Merger, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings 2, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings Mezz Borrower III, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings Mezz Borrower II, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings Mezz Borrower, LLC, a Delaware limited liability company, as a member of **LION ES HOTELS HOLDINGS, LLC**, a Delaware liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Authorized Signatory, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as the manager of Lion ES Management, LLC, a Delaware limited liability company, as the manager of Lion ES Merger, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings 2, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings Mezz Borrower III, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings Mezz Borrower II, LLC, a Delaware limited liability company, as the sole member of Lion ES Hotels Holdings Mezz Borrower, LLC,



a Delaware limited liability company, as a member of **LION ES HOTELS HOLDINGS, LLC**,  
a Delaware liability company as aforesaid.

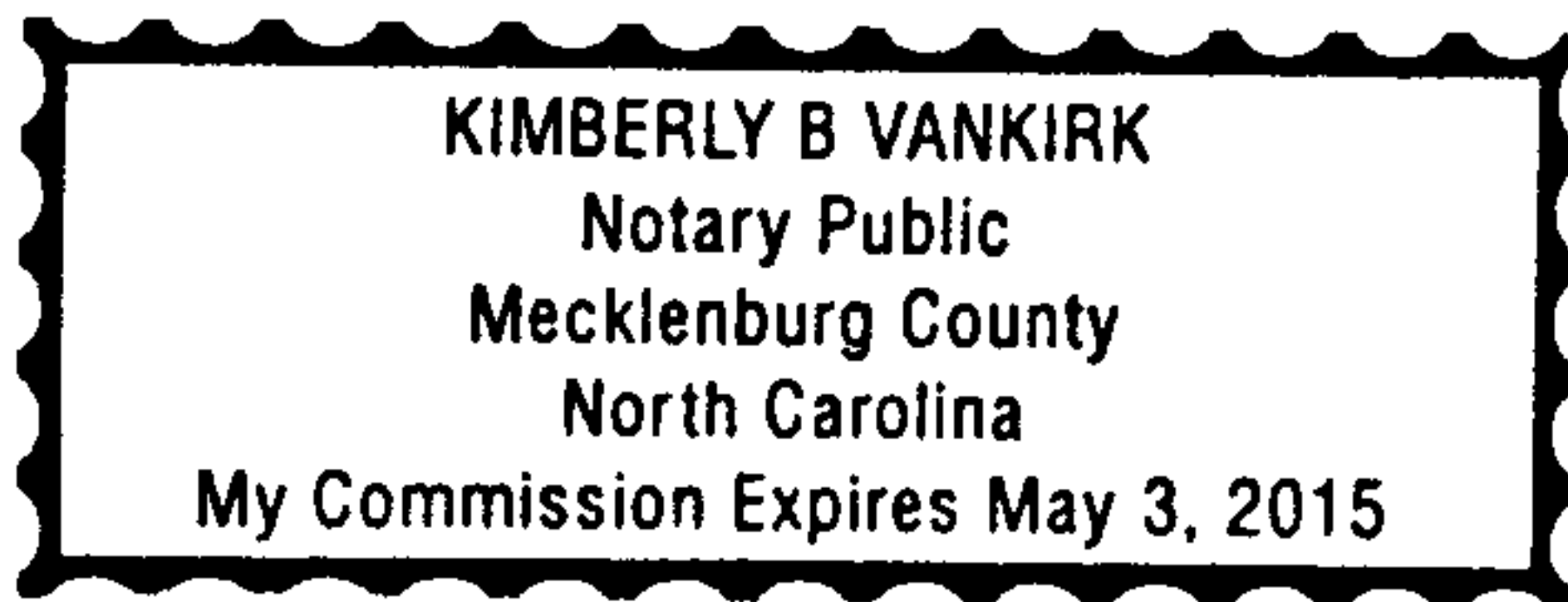
Given under my hand this 13<sup>th</sup> day of August, 2012.

Kimberly B. Vankirk

NOTARY PUBLIC

Notarial Seal]

My Commission expires: May 3, 2015





STATE OF North Carolina )

COUNTY OF Mecklenburg )

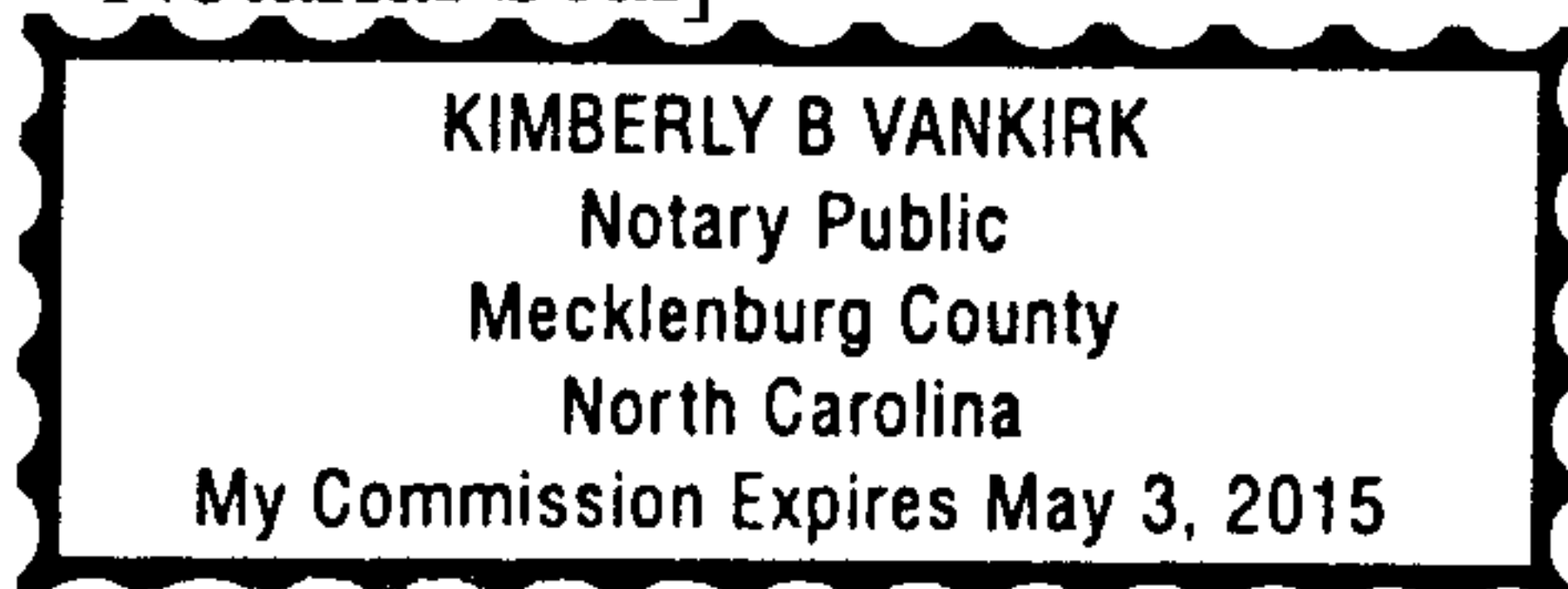
I, Kimberly B. Van Kirk, a Notary Public in and for said County in said State, hereby certify that John M. Harris, whose name as Authorized Signatory of Clarion Partners, LLC, a New York limited liability company, as the manager of LES Hotel Lessee Holdings, LLC, a Delaware limited liability company, as the sole member of LES Hotel Lessee Holdings Mezz Pledgor, LLC, a Delaware limited liability company, as the sole member of LES Hotel Lessee Holdings Pledgor, LLC, a Delaware limited liability company, as the sole member of **LES HOTEL LESSEE, LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Authorized Signatory and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as the manager of LES Hotel Lessee Holdings, LLC, a Delaware limited liability company, as the sole member of LES Hotel Lessee Holdings Mezz Pledgor, LLC, a Delaware limited liability company, as the sole member of LES Hotel Lessee Holdings Pledgor, LLC, a Delaware limited liability company, as the sole member of **LES HOTEL LESSEE, LLC**, a Delaware limited liability company as aforesaid.

Given under my hand this 13<sup>th</sup> day of August, 2012.

Kimberly B. Van Kirk

NOTARY PUBLIC

Notarial Seal]



My Commission expires: \_\_\_\_\_



Exhibit "A"  
(Legal Description)

All that tract or parcel of land lying and being in the District of Shelby County, Alabama, and being more particularly described as follows:

**PARCEL I**

Being a part of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run West along the South line of said Quarter-Quarter section for a distance of 263.21 feet to the point of beginning; thence continue West along the last described course a distance of 696.06 feet; thence 90 degree(s) 00 minute(s) right and in a Northerly direction for a distance of 95.00 feet; thence 43 degree(s) 00 minute(s) left and in a Northwesterly direction for a distance of 127.00 feet; thence 43 degree(s) 30 minute(s) right and in a Northerly direction for a distance of 75.00 feet to a point situated on the Southeasterly right-of-way line of a proposed road and said point of curve of a curve to the right said curve to the right having a radius of 610.14 feet and a central angle of 37 degree(s) 16 minute(s) 38 second(s); thence 72 degree(s) 00 minute(s) right to the chord of said curve to the right and run Northeasterly along the Southeasterly right-of-way line of the proposed road and the arc of said curve to the right for a distance of 396.96 feet to the end of said curve to the right and the beginning of a curve to the left and said curve to the left having a radius of 319.14 feet and a central angle of 25 degree(s) 30 minute(s) 50 second(s); thence Northeasterly along the Southeasterly right-of-way line of proposed road and the arc of said curve for a distance of 142.24 feet; thence 101 degree(s) 28 minute(s) 36 second(s) right from the chord of last stated curve and in a Southerly direction for a distance of 117.17 feet; thence 82 degree(s) 08 minute(s) 06 second(s) left and in an Easterly direction for a distance of 65.46 feet; thence 71 degree(s) 05 minute(s) 09 second(s) left and in a Northeasterly direction for a distance of 61.78 feet to a point on the approximate lake shore; thence 99 degree(s) 36 minute(s) 57 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 57.08 feet; thence 19 degree(s) 26 minute(s) 40 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 73.28 feet; thence 0 degree(s) 38 minute(s) 40 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 81.94 feet; thence 25 degree(s) 42 minute(s) 01 second(s) left and in a Southeasterly direction along the approximate lake shore for a distance of 50.71 feet; thence 24 degree(s) 37 minute(s) 55 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 94.93 feet; thence 17 degree(s) 49



minute(s) 50 second(s) right and in a Southeasterly direction along the approximate lake shore for a distance of 52.74 feet; thence 74 degree(s) 12 minute(s) 26 second(s) right and in a Southwesterly direction for a distance of 83.74 feet to the point of beginning.

Tax parcel No. 02-7-36-0-001-019.00

Also a Non-Exclusive Easement for ingress and egress described as follows:

## **PARCEL II**

Being a part of the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northwest Quarter, Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of said Section; thence run West along the South line of said Southwest Quarter of the Northeast Quarter for a distance of 1020.17 feet; thence 62 degree(s) 50 minute(s) 45 second(s) left and in a Southwesterly direction for a distance of 54.50 feet to a point of the Northeasterly right-of-way line of US Highway No. 280. said right-of-way being in a curve to the right, curving Northerly, said curve to the right having a radius of 5639.58 feet and a central angle of 2 degree(s) 23 minute(s) 16 second(s); thence 92 degree(s) 28 minute(s) 13 second(s) right to the chord of said curve to the right and run in a Northeasterly direction along the Northeasterly right-of-way line of U.S. Highway No. 280 and the arc of said curve to the right for a distance of 235.02 feet to the point of beginning, said point being the point of intersection of the Northeasterly right-of-way line of U.S. Highway No. 280 with the Southeasterly right-of-way line of a proposed road, said proposed road right-of-way being in a curve to the right, curving Northeasterly, said curve to the right having a radius of 377.81 feet and a central angle of 22 degree(s) 27 minute(s) 01 second(s); thence 101 degree(s) 00 minute(s) 43 second(s) right from the chord of the U.S. Highway No. 280 curve to the chord of the curve of the proposed road and run Northeasterly along the Southeasterly right-of-way line of the proposed road and the arc of the curve for a distance of 148.04 feet to the end of said curve; thence at tangent to said curve continue Northeasterly along the Southeasterly right-of-way line of the proposed road for a distance of 130.32 feet to the beginning of a curve to the right, said curve to the right having a radius of 610.14 feet and a central angle of 18 degree(s) 38 minute(s) 19 second(s); thence Northeasterly along the arc of said curve and the Southeasterly right-of-way line of the proposed road for a distance of 198.48 feet to the end of curve; thence 90 degree(s) 00 minute(s) Left from the tangent of said curve and in Northwesterly direction for a distance of 60.00 feet to a point on the Northwesterly right-of-way line of proposed road, said point being situated on a curve to the left and curving Southwesterly, said curve having a radius of 670.14 feet and a central angle of 18 degree(s) 38 minute(s) 19 second(s); thence continue Southwesterly along the Northwesterly right-of-way line of the proposed road and the arc of said curve to the left for a distance of 218.00 feet to the end of said curve; thence 90 minute(s) 00 minute(s) right from the tangent of said curve in a Northwesterly direction for a distance of 15.00 feet; thence 90 degree(s) 00 minute(s) left and in a Southwesterly direction along the Northwesterly right-of-way line of proposed road for a distance of 179.92 feet to the beginning of a curve to the left, said curve to the left having a radius of 422.57 feet and a central angle of 17 degree(s) 23 minute(s) 48 second(s); thence continue Southwesterly



along the Northwestern right-of-way line of the proposed road and the arc of said curve for a distance of 128.30 feet to the end of said curve and the point of intersection of the Northwestern right-of-way line of the proposed road with the Northeasterly right-of-way line of U.S. Highway No. 280, the Northeasterly right-of-way line of U.S. Highway No. 280 being in a curve to the left, curving Southeasterly, said curve having a radius of 5639.58 feet and a central angle of 00 degree(s) 54 minute(s) 54 second(s); thence Southeasterly along the arc of said curve to the left and the Northeasterly right-of-way line of U.S. Highway No. 280 for a distance of 90.06 feet to the point of beginning.

The above described "Non-Exclusive Easement" shall terminate upon the completion of the road way to be constructed thereon, and upon the dedication to and acceptance by Shelby County, Alabama, as a dedicated public street.

Also a slope easement for ingress and egress to the Lakeshore described as follows:

**PARCEL III:**

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and run West along the South line of said Quarter-Quarter section for a distance of 263.21 feet; thence 145 degree(s) 18 minute(s) 42 second(s) right and in a Northeasterly direction for a distance of 83.74 feet; thence 74 degree(s) 12 minute(s) 26 second(s) left and in a Northwestern direction for a distance of 52.74 feet; thence 17 degree(s) 49 degree(s) 50 second(s) left and in a Northwestern direction for a distance of 94.93 feet; thence 24 degree(s) 37 minute(s) 55 second(s) left and in a Northwestern direction for a distance of 50.71 feet; thence 25 degree(s) 42 minute(s) 01 second(s) right and in a Northwestern direction for a distance of 81.94 feet; thence 0 degree(s) 38 minute(s) 40 second(s) left and in a Northwestern direction for a distance of 73.28 feet; thence 19 degree(s) 26 minute(s) 40 second(s) left and in a Northwestern direction for a distance of 57.08 feet; thence 99 degree(s) 36 minute(s) 57 second(s) left and in a Southwesterly direction for a distance of 61.78 feet to the point of beginning of the slope easement herein described; thence 71 degree(s) 05 minute(s) 09 second(s) right and in a Westerly direction for a distance of 65.46 feet; thence 82 degree(s) 08 minute(s) 06 second(s) right and in a Northerly direction for a distance of 45.00 feet; thence 99 degree(s) 11 minute(s) 54 second(s) right and in an Easterly direction for 86.23 feet; thence 107 degree(s) 34 minute(s) 51 second(s) right and in a Southwesterly direction for a distance of 45.00 feet to the point of beginning.


**PARCEL IV:**

Also, a Non-Exclusive Sign Easement, being more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run West along the South line of said Quarter-Quarter section for a distance of 1020.17 feet; thence 62 degree(s) 50 minute(s) 45 second(s) left and in a Southwesterly direction for a distance of 54.50 feet to a point on the Northeasterly right-of-way line of U.S. Highway No. 280. said right-of-way line being in a curve to the right, curving Northerly, said curve to the right having a radius of 5639.58 feet and a central angle of 3 degree(s) 18 minute(s) 10 second(s); thence 92 degree(s) 55 minute(s) 40 second(s) right to the chord of said



curve to the right and run Northwesterly along the Northeasterly right of way line of U.S. Highway No. 280, and the arc of said curve to the right for a distance of 325.08 feet to the point of beginning. Said point being the point of intersection of the Northeasterly right- of-way line of U.S. Highway No. 280 and the Northwesterly right-of-way line of a proposed road; thence continue Northwesterly along the Northeasterly right-of-way line of U.S. Highway No. 280 and the arc of a curve to the right having a radius of 5639.58 feet and a central angle of 0 degree(s) 09 minute(s) 10 second(s) for a distance of 15.04 feet; thence 90 degrees 00 minute(s) right from the tangent of said curve to the right for a distance of 21.49 feet; thence 95 degree(s) 17 minute(s) 24 second(s) right and in a Southeasterly direction for a distance of 16.48 feet to a point on the Northwesterly right-of-way line of a proposed road, said point being situated on a curve to the left, curving Southerly, said curve to the left having a radius of 422.57 feet and a central angle of 2 degree(s) 42 minute(s) 42 second(s); thence run Southwesterly along the Northwesterly right-of-way line of the proposed road and the arc of said curve to the left for a distance of 20.00 feet to the point of beginning. Situated in Shelby County, Alabama.

  
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Shelby Cnty Judge of Probate, AL  
09/10/2012 12:27:50 PM FILED/CERT







**REESE MCKINNEY, JR.**  
JUDGE OF PROBATE  
**MONTGOMERY COUNTY**

STATE OF ALABAMA  
MONTGOMERY COUNTY

I, the undersigned **Reese McKinney, Jr.**, Judge of Probate of Montgomery County, Alabama, hereby certify that the mortgage from Lion ES Hotels Holdings, LLC And LES Hotel Lessee, LLC indebted to Bank of America, N.A for the amount of \$6,599,500.00 has been filed for record in the Probate Office of Montgomery County, Alabama, Records and Recording Department, and mortgage tax of \$9,899.25 has been paid.

In Witness Whereof, I, the said **Reese McKinney, Jr.**, as Judge of Probate of Montgomery County, Alabama, hereunto set my name and affix my seal of said Probate on this 28th day of August, 2012.

  
Reese McKinney Jr. Judge of Probate  
Montgomery, County, Alabama

  
20120910000341580 31/31 \$103.00  
Shelby Cnty Judge of Probate, AL  
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