

**IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND  
FOR ORANGE COUNTY, FLORIDA**

ENOCK PLANCHER, as Personal  
Representative of the ESTATE OF  
ERECK MICHAEL PLANCHER, II,  
Deceased,

Plaintiff,

v.

UCF ATHLETICS ASSOCIATION,  
INC., a Florida corporation,

Defendant.

**Case No.: 2009-CA-007444-0**  
**Division: 40**

**DOC # 20170391724**

07/13/2017 15:21 PM Page 1 of 3

Rec Fee: \$0.00

Deed Doc Tax: \$0.00

Mortgage Doc Tax: \$0.00

Intangible Tax: \$0.00

Phil Diamond, Comptroller

Orange County, FL

Ret To: ORANGE COUNTY CLERK OF COURT

ERECORD

**SECOND AMENDED FINAL JUDGMENT FOR DAMAGES AND COSTS**

Pursuant to the jury verdict rendered in this action on June 30, 2011, and after considering the decision of the Supreme Court of Florida in *Plancher v. UCF Athletics Association, Inc.*, 175 So. 3d 724 (Fla. 2015), the Supreme Court's Mandate, the Motion for Clarification or Rehearing, or, Alternatively, Motion for Temporary Stay of Execution filed by both UCF Athletics Association, Inc., and Great American Assurance Company, Plaintiff's response thereto, legal memoranda submitted by the parties, and the arguments of counsel, it is

**ORDERED and ADJUDGED** as follows:

1. The Motion for Clarification or Rehearing is **GRANTED** to the extent set forth herein. This Court is bound by the Supreme Court of Florida's mandate in *Plancher v. UCF Athletics Association, Inc.*, 175 So. 3d 724 (Fla. 2015). Footnote 4 of the *Plancher* opinion considered, and rejected as "without any merit," Plaintiff's argument that UCFAA's liability insurance company would remain responsible for the entire judgment amount notwithstanding any

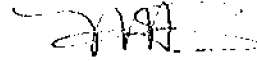
limitation on UCFAA's liability based on a finding that UCFAA was entitled to limited sovereign immunity. The Supreme Court specifically stated: "The Planchers also argue that, even if UCFAA is entitled to limited sovereign immunity, UCFAA's liability insurance company is still responsible for the entire judgment amount. However, this argument is without any merit." The *Plancher* opinion concluded by stating: "The Planchers must look to the Legislature to collect any amount awarded above the statutory cap." This Court is bound by those directives and, accordingly, this Second Amended Final Judgment for Damages and Costs cannot authorize Plaintiff to collect any amount from UCFAA or Great American Assurance Company above the statutory cap.

2. The Amended Final Judgment for Damages entered on December 7, 2016 is hereby vacated and set aside. The Amended Final Judgment for Damages and Costs (dated July 7, 2016) remains vacated and set aside as ordered on December 7, 2016.

3. Plaintiff ENOCK PLANCHER, as Personal Representative of the Estate of ERECK MICHAEL PLANCHER, II, deceased, shall recover from Defendant UCF ATHLETICS ASSOCIATION, INC., whose address is 4000 Central Florida Boulevard, Building 38, Room 123, Orlando, Florida 32816 and EIN Number is 562334448, and Great American Assurance Company, whose principal address is 580 Walnut Street, Cincinnati, OH 45202 and EIN Number is 310501234, jointly and severally, the sum of \$10,000,000.00 based on the jury's verdict, together with \$524,931.22 for costs, for a total Second Amended Final Judgment amount of \$10,524,931.22, that shall bear interest at the applicable statutory interest rate pursuant to Fla. Stat. § 55.03, for which let execution issue. Pursuant to Florida Statute § 768.28(5), the liability of UCF ATHLETICS ASSOCIATION, INC. and Great American Assurance Company for payment, and Plaintiff's right to execute on this Amended Final Judgment, together with all judgments entered in this action, is limited to \$200,000.00.

This Second Amended Final Judgment for Damages and Costs shall supersede and replace both the Final Judgment entered in this action on August 2, 2011 and the Final Judgment for Costs entered in this action on November 16, 2011.

**DONE AND ORDERED** at Orlando, Orange County, Florida this 13<sup>th</sup> day of July, 2017  
*nunc pro tunc* to June 30, 2011.



**MARGARET H. SCHREIBER**  
Circuit Judge

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic filing by using the Florida Courts E-Filing Portal System on this 13<sup>th</sup> day of July, 2017, and accordingly, a copy is being served via electronic filing to C. Steven Yerrid, Esquire, [syerrid@yerridlaw.com](mailto:syerrid@yerridlaw.com), David D. Dickey, Esquire, [ddickey@yerridlaw.com](mailto:ddickey@yerridlaw.com), J.D. Dowell, Esquire, [jdowell@pdmmlaw.com](mailto:jdowell@pdmmlaw.com), Daniel A. Shapiro, Esquire, [Daniel.shapiro@esklegal.com](mailto:Daniel.shapiro@esklegal.com), Matthew J. Conigliaro, Esquire, [mconigliaro@carltonfields.com](mailto:mconigliaro@carltonfields.com), [smartindale@carltonfields.com](mailto:smartindale@carltonfields.com), and Attorneys for UCF Athletic Association, Inc., and Great American Assurance Company, [stpeef@cfidom.net](mailto:stpeef@cfidom.net).



Judicial Assistant

Rec Fee: \$18.50

Deed Doc Tax: \$0.70

Mortgage Doc Tax: \$0.00

Intangible Tax: \$0.00

Phil Diamond, Comptroller

Orange County, FL

Ret To: SIMPLIFILE LC

This Easement was prepared by:  
 Brad Richardson,  
 Bureau of Public Land Administration  
 Division of State Lands  
 Department of Environmental Protection, MS 130  
 3900 Commonwealth Boulevard,  
 Tallahassee, Florida 32399-3000  
 Easement No.: 33085  
 AID: 34712

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT  
 TRUST FUND OF THE STATE OF FLORIDA**

**EASEMENT**

The undersigned, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grants and gives to **PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, a Florida Corporation**, its licensees, agents, successors, and assigns, a non-exclusive easement for a period of fifty (50) years commencing on the date of execution, for the construction, installation, use, maintenance, inspection, repair, replacement and removal of natural gas transmission lines, within an easement ten (10) feet in width as depicted in the attached Exhibit "A" (the "Easement Area")

Together with the right of ingress and egress to said premises at all times, the right to clear the land and keep it cleared of all trees, undergrowth that may obstruct the electric distribution facilities within the Easement Area; to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the Easement Area which might interfere with or fall upon the lines or systems of the electric distribution facilities; Provided, however, any allowed work within or around the Easement Area requires the prior coordination with the land manager.

**IN WITNESS WHEREOF**, the parties have caused this Easement to be executed on the day and year written below.

WITNESSES:

DAVE FEWELL  
 Original Signature  
DAVE FEWELL  
 Print/Type Name of Witness  
DAVE FEWELL  
 Original Signature  
Brad Richardson  
 Print/Type Name of Witness

**BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT  
 TRUST FUND OF THE STATE OF FLORIDA**

BY: Cheryl C. McCall (SEAL)  
 Cheryl C. McCall, Chief, Bureau of Public Land Administration,  
 Division of State Lands, State of Florida Department of Environmental  
 Protection as agent for and on behalf of the Board of Trustees of the  
 Internal Improvement Trust Fund of the State of Florida

Date: August 23, 2017

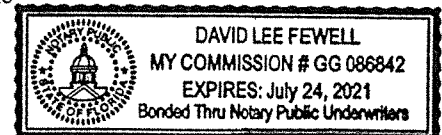
**STATE OF FLORIDA  
 COUNTY OF LEON**

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 2017, by Cheryl C. McCall, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. She is personally known to me.

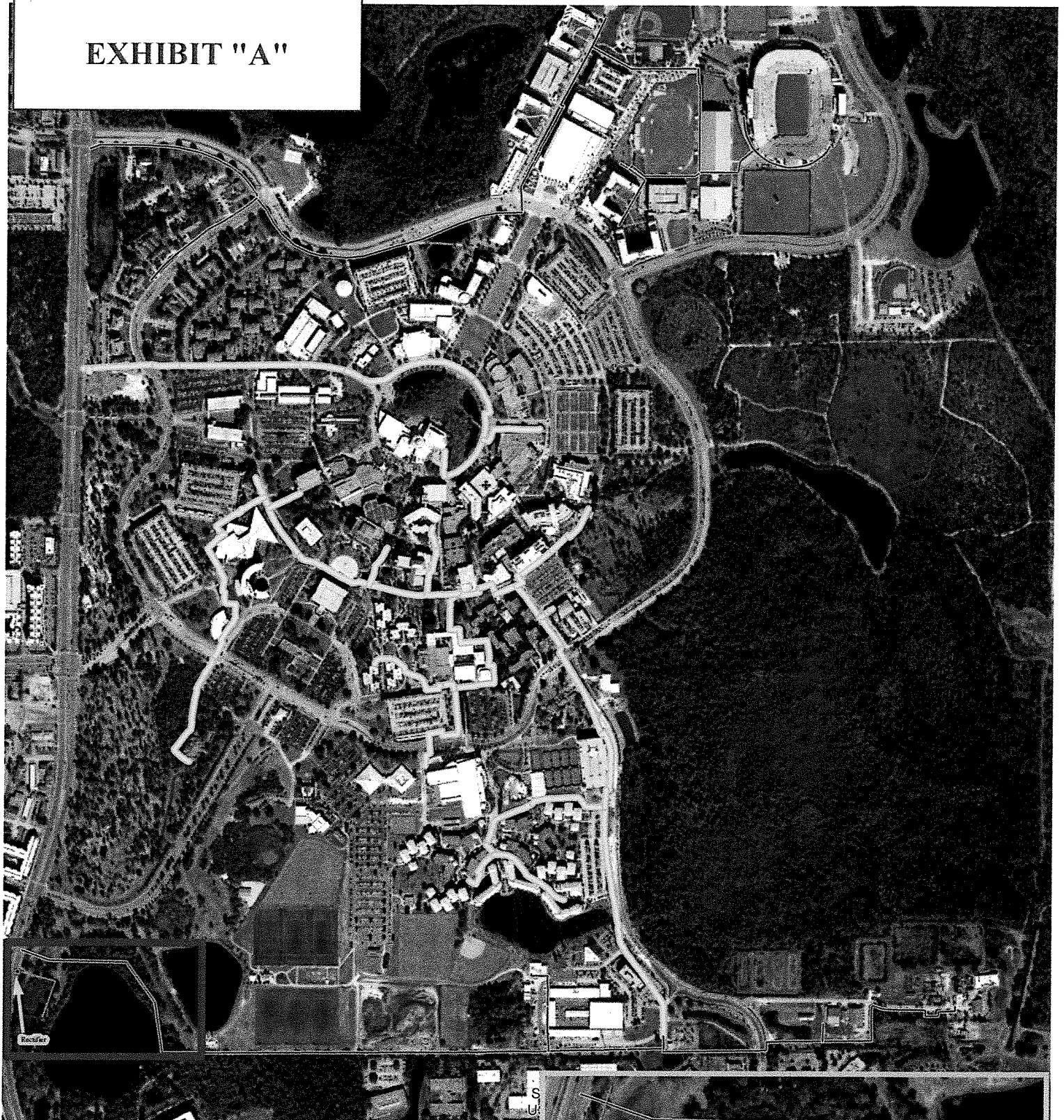
David Lee Fewell  
 Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:  
 Commission/Serial No.

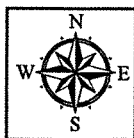


# EXHIBIT "A"

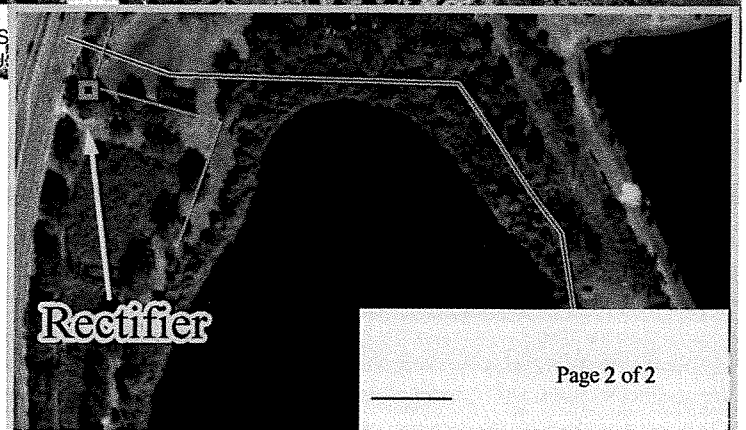


20170525544 Page 2 of 2

Within BOT Lease No. 2721  
County: Orange  
Sections 2, 3, 10, & 11, Twp 22S, Rge 31E



June 27, 2017  
Shannon Ashworth  
Utilities & Energy Services



Page 2 of 2

A2E0439A

Permit Number: \_\_\_\_\_  
Folio/Parcel ID #: \_\_\_\_\_  
Prepared by: T-Mobile  
5901 Benjamin Center Drive, Suite 110A-B  
Tampa, FL 33624  
Return to: \_\_\_\_\_  
\_\_\_\_\_

DOCH 20180338872  
06/08/2018 11:20:55 AM Page 1 of 1  
Rec Fee: \$10.00  
Phil Diamond, Comptroller  
Orange County, FL  
IP - Ret To: ATLANTIC TOWER SERVICES



**NOTICE OF COMMENCEMENT**

State of Florida, County of Orange  
The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. **Description of property** (legal description of the property, and street address if available)  
4382 North Orion Blvd., Orlando 32826
2. **General description of improvement**  
Installation of a new Generator for existing telecom facility. All work will be civil & electrical only / A2E0439A
3. **Owner information or Lessee information if the Lessee contracted for the improvement**  
Name T-Mobile  
Address 5901 Benjamin Center Drive, Suite 110A-B, Tampa, FL 33624  
Interest in Property Lessee  
Name and address of fee simple titleholder (if different from Owner listed above)  
Name Atlantic Tower Services  
Address 450 S. Ronald Reagan Blvd Longwood FL 32750
4. **Contractor**  
Name \_\_\_\_\_ Telephone Number \_\_\_\_\_  
Address \_\_\_\_\_
5. **Surety** (if applicable, a copy of the payment bond is attached)  
Name N/A Telephone Number \_\_\_\_\_  
Address \_\_\_\_\_ Amount of Bond \$ \_\_\_\_\_
6. **Lender**  
Name N/A Telephone Number \_\_\_\_\_  
Address \_\_\_\_\_
7. **Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by §713.13(1)(a)7, Florida Statutes.**  
Name \_\_\_\_\_ Telephone Number \_\_\_\_\_  
Address \_\_\_\_\_
8. **In addition to himself or herself, Owner designates the following to receive a copy of the Lienor's Notice as provided in §713.13(1)(b), Florida Statutes.**  
Name \_\_\_\_\_ Telephone Number \_\_\_\_\_  
Address \_\_\_\_\_
9. **Expiration date of notice of commencement** (the expiration date will be 1 year from the date of recording unless a different date is specified) \_\_\_\_\_

**WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.**

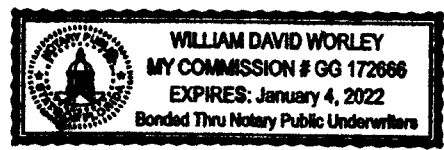
Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager \_\_\_\_\_  
Signature of Site Development Manager  
Signatory's Title/Office \_\_\_\_\_

The foregoing instrument was acknowledged before me this 2 day of April 2018 by \_\_\_\_\_  
month/year name of person

as \_\_\_\_\_ for \_\_\_\_\_  
Type of authority, e.g., officer, trustee, attorney in fact Name of party on behalf of whom instrument was executed

Signature of Notary Public - State of Florida \_\_\_\_\_  
Print, type, or stamp commissioned name of Notary Public \_\_\_\_\_

Personally Known ☒ OR Produced ID \_\_\_\_\_  
Type of ID Produced \_\_\_\_\_



Permit Number: \_\_\_\_\_  
Folio/Parcel ID #: \_\_\_\_\_  
Prepared by: All-Star Homes LLC  
1450 Kastner Place #128  
Sanford, Florida 32771  
Return to: \_\_\_\_\_  
\_\_\_\_\_

DOCH 20180421548  
07/17/2018 11:48:23 AM Page 1 of 1  
Rec Fee: \$10.00  
Phil Diamond, Comptroller  
Orange County, FL  
MB - Ret To: ALL STAR HOMES LLC



### NOTICE OF COMMENCEMENT

State of Florida, County of Orange

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. **Description of property** (legal description of the property, and street address if available)  
3900 N Alafaya Trl, Orland Florida 32826
2. **General description of improvement**  
Extend outside deck and tie into existing deck
3. **Owner information or Lessee information if the Lessee contracted for the improvement**  
Name Collegiate Square Tech Center LLC  
Address 1350 N. Orange Avenue Suite 100, Winter Park Florida 32789  
Interest in Property Owner  
Name and address of fee simple titleholder (if different from Owner listed above)  
Name  
Address
4. **Contractor**  
Name All-Star Homes LLC Telephone Number 407-829-2299  
Address 1450 Kastner Place #128, Sanford Florida 32771
5. **Surety** (if applicable, a copy of the payment bond is attached)  
Name N/A Telephone Number N/A  
Address N/A Amount of Bond \$ \_\_\_\_\_
6. **Lender**  
Name Telephone Number \_\_\_\_\_  
Address
7. **Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by §713.13(1)(a)7, Florida Statutes.**  
Name Telephone Number \_\_\_\_\_  
Address
8. **In addition to himself or herself, Owner designates the following to receive a copy of the Lienor's Notice as provided in §713.13(1)(b), Florida Statutes.**  
Name Daniel Wurl/All-Star Homes LLC Telephone Number 407-829-2299  
Address 1450 Kastner Place #128, Sanford Florida 32771
9. **Expiration date of notice of commencement** (the expiration date will be 1 year from the date of recording unless a different date is specified) \_\_\_\_\_

**WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.**

[Signature]  
Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager

\_\_\_\_\_  
Signatory's Title/Office

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 2018 by

Mary Demetrel

as owner  
Type of authority, e.g., officer, trustee, attorney in fact

for Collegiate Square Tech Center LLC  
Name of party on behalf of whom instrument was executed

[Signature]  
Signature of Notary Public - State of Florida

Gail Marie Frazier  
Print, type, or stamp commissioned name of Notary Public  
Commission # FP52942  
Expires: February 24, 2020  
Bonded thru Aaron Notary

Personally Known ☒ OR Produced ID ☐  
Type of ID Produced \_\_\_\_\_

Rec Fee: \$10.00

Deed Doc Tax: \$0.00

Mortgage Doc Tax: \$0.00

Intangible Tax: \$0.00

Phil Diamond, Comptroller

Orange County, FL

Ret To: SIMPLIFILE LC

## THIS INSTRUMENT PREPARED BY:

Name: WHITE SIGN COMPANY

Address: 907 S CHARLES RICHARD BEALL BLVD STE B  
DEBARY, FL 32713

## NOTICE OF COMMENCEMENT

Permit Number: \_\_\_\_\_

Parcel ID Number: 03-22-31-0000-00-005

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

## 1. DESCRIPTION OF PROPERTY: (Legal description of the property and street address if available)

4258 WEST PLAZA BLVD, ORLANDO, FL 32816

## 2. GENERAL DESCRIPTION OF IMPROVEMENT:

INSTALL EXTERIOR SIGNAGE

## 3. OWNER INFORMATION OR LESSEE INFORMATION IF THE LESSEE CONTRACTED FOR THE IMPROVEMENT:

Name and address: 4258 West Plaza Dr. Orlando, FL 32816

Interest in property: LESSEE

Fee Simple Title Holder (if other than owner listed above) Name: \_\_\_\_\_

Address: \_\_\_\_\_

## 4. CONTRACTOR: Name: WHITE SIGN COMPANY

Phone Number: 386-320-0623

Address: 907 S CHARLES RICHARD BEALL BLVD STE B, DEBARY, FL 32713

## 5. SURETY (If applicable, a copy of the payment bond is attached): Name: \_\_\_\_\_

Address: \_\_\_\_\_

Amount of Bond: \_\_\_\_\_

## 6. LENDER: Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

## 7. Persons within the State of Florida Designated by Owner upon whom notice or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes.

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

## 8. In addition, Owner designates \_\_\_\_\_ of \_\_\_\_\_

to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes. Phone number: \_\_\_\_\_

## 9. Expiration Date of Notice of Commencement (The expiration is 1 year from date of recording unless a different date is specified) \_\_\_\_\_

**WARNING TO OWNER:** ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

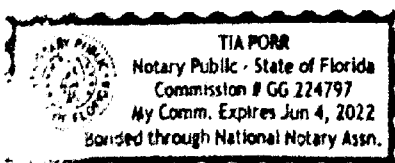
Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true to the best of my knowledge and belief.

(Signature of Owner or Lessee, or Owner's or Lessee's  
Authorized Officer/Director/Partner/Manager)

(Print Name and Provide Signatory's Title/Office)

State of FLORIDA County of ORANGEThe foregoing instrument was acknowledged before me this 28<sup>th</sup> day of August, 2018by Jeremy (Jay) Clark Who is personally known to me ☐ OR

Name of person making statement

who has produced identification ☒ type of identification produced: FLDL CA62438774490
  
Notary Signature



This instrument prepared by  
and after recording return to:

Michaël Ryan, Esq.  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A  
215 N. Eola Dr.  
Orlando FL 32801

DOC# 20180518799  
08/30/2018 03:43:04 PM Page 1 of 7  
Rec Fee: \$61.00  
Deed Doc Tax: \$0.00  
DOR Admin Fee: \$0.00  
Intangible Tax: \$0.00  
Mortgage Stamp: \$0.00  
Phil Diamond, Comptroller  
Orange County, FL  
PU - Ret To: LOWNDES DROSDICK ET AL



(Space Reserved for Clerk of the Court)

### MEMORANDUM OF SUBLEASE

THIS MEMORANDUM OF SUBLEASE ("Memorandum") is made as of the 29  
day of August, 2018 between THE UNIVERSITY OF CENTRAL FLORIDA BOARD  
OF TRUSTEES ("Landlord"), and PEGASUS HOTEL LLC, a Delaware limited liability  
company ("Tenant").

#### RECITALS:

A. Landlord and Tenant have entered into that certain Sublease Agreement executed by Landlord on or about April 11, 2016, as modified by a First Amendment to Sublease dated June 20, 2018 (the "Sublease"), with respect to that certain property located in Orange County, Florida described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "Property").

B. Landlord and Tenant desire to execute and record this Memorandum to memorialize the Sublease and to place certain provisions of the Sublease of record.

NOW THEREFORE with respect to the Sublease, Landlord and Tenant hereby acknowledge and agree as follows:

1. Demise. The Property has been, and is hereby, demised, let and leased by Landlord to Tenant, and taken and accepted by Tenant from Landlord, all pursuant to and in accordance with the Sublease.

2. Prohibition of Liens on Landlord's Interest. All interested parties are hereby placed on notice, by the recordation of this Memorandum, that the Sublease contains the following provisions:

27.2. No Liens or Additional Encumbrances. Landlord shall not permit any mortgage or other liens to exist with respect to the State of Florida Board of Trustees of the Internal Improvement Trust Fund's fee simple interest in the Property. Landlord shall not grant any easements, restrictions or other encumbrances on the Property without Tenant's consent.

4.5. Mechanic's Liens: Landlord and Tenant agree that the interest of Landlord shall not be subject to liens for any of the improvements to be made by Tenant to the Properties and this Sublease is intended specifically to prohibit Landlord liability pursuant to Florida Statutes Section 713.10. Nothing contained in this Sublease shall be construed as a consent or agreement on the part of Landlord to subject Landlord's estate in the Property to any lien or liability arising out of Tenant's use or occupancy of the Property. Landlord shall be entitled to record a short form Sublease in the public records of Orange County, Florida, advising that Landlord's interest in the Property shall not be subject to any lien arising from Tenant's construction of improvements on the Property. Tenant covenants and agrees to give any required notices or disclosures to Tenant's contractors advising that Landlord's interest in the Property is not subject to liens arising from Tenant's construction of improvements on the Property

3. Memorandum. This Memorandum is merely a memorandum of certain of the terms and provisions of the Sublease and is not intended to modify, amend, supplement or derogate the Sublease. All parties are required to look to the entire Sublease for the full terms, conditions and obligations between Landlord and Tenant.

[Signatures on following pages]

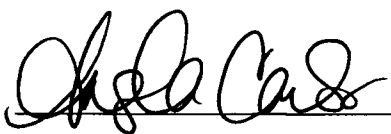
[Attached to Memorandum of Sublease]

IN WITNESS WHEREOF, the Landlord and Tenant have caused these presents to be executed in manner and form sufficient to bind them as of the day and year first above written.

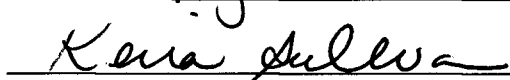
Signed, sealed and delivered  
in the presence of:

LANDLORD:

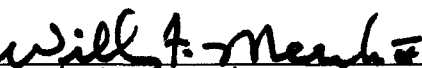
UNIVERSITY OF CENTRAL FLORIDA  
BOARD OF TRUSTEES



Print Name: Angela Carlross



Print Name: Keira Sullivan


By:   
Name: William F. Merck II  
Title: VP for Admin + Finance, CFO

STATE OF FLORIDA )  
) SS:  
COUNTY OF ORANGE )

The foregoing instrument was acknowledged before me this 29 day of August, 2018 by William F. Merck II as CFO of THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES, who is personally known to me or produced NA as identification.

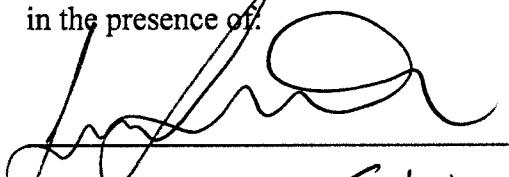
[Notary Seal]

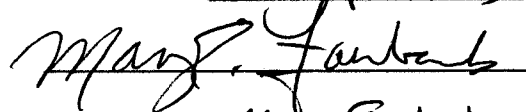


  
Print Name: Tracy D. Slavic  
Notary Public, State of Florida  
Commission No.: GG 106243  
My commission expires: Sept. 16, 2021

[Attached to Memorandum of Sublease]

Signed, sealed and delivered  
in the presence of:

  
Print Name: Terry Fairbanks

  
Print Name: Mary Fairbanks


**TENANT:**

**PEGASUS HOTEL LLC**, a Delaware limited liability company

By: Pegasus Hotel Venture LLC, a Delaware limited liability company, Manager

By: PHM University 2018 Hotel Investor LLC, a Florida limited liability company, Manager


By: PHM University 2018 Hotel Manager LLC, a Florida limited liability company, Manager

By:   
Name: Steven J. Fairbanks  
Title: Manager

STATE OF Maryland )  
COUNTY OF Montgomery ) SS:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August, 2018 by Steven J. Fairbanks, as Manager of PHM University 2018 Hotel Manager LLC, a Florida limited liability company, as Manager of PHM University 2018 Hotel Investor LLC, a Florida limited liability company, as Manager of Pegasus Hotel Venture LLC, a Delaware limited liability company, as Manager of Pegasus Hotel LLC, a Delaware limited liability company, on behalf of the limited liability company, who is personally known to me or produced Florida Drivers License as identification.

[Notary Seal]

  
Print Name: Mary E. Fairbanks  
Notary Public, State of Montgomery County, Maryland  
Commission No.: My Commission Expires 6/8/2021  
My commission expires: \_\_\_\_\_

[Attached to Memorandum of Sublease]

**Exhibit "A"**  
**Legal Description**

**THE PROPERTY**

A portion of Section 3, Township 22 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at the South Quarter Corner of Section 3, Township 22 South, Range 31 East, Orange County, Florida; thence South 89°30'24" West, a distance of 1195.08 feet along the South line of the Southwest Quarter of said Section 3 to a point on the Easterly Right of Way of State Road 434 per Florida Department of Transportation Right of Way Map Section 75037-2501; thence the following four (4) courses and distances along said Easterly Right of Way: North 14°50'32" West, a distance of 65.92 feet; thence North 59°24'26" West, a distance of 60.17 feet to a point on a non-tangent curve concave Westerly, having a radius of 11394.16 feet, a central angle of 00°10'34" and a chord bearing of North 01°18'40" East; thence from a tangent bearing North 01°23'57" East, Northerly 35.02 feet along the arc of said curve to the point of tangency thereof; thence North 01°13'23" East, a distance of 79.61 feet; thence departing said Right of Way South 89°59'13" East, a distance of 23.99 feet to the POINT OF BEGINNING; thence North 01°12'54" East, a distance of 54.20 feet; thence North 01°04'23" West, a distance of 199.25 feet; thence North 01°02'40" East, a distance of 122.77 feet; thence North 00°09'44" East, a distance of 375.75 feet; thence North 00°37'14" East, a distance of 270.62 feet; thence South 88°42'25" East, a distance of 287.70 feet; thence South 28°12'37" West, a distance of 128.74 feet; thence South 11°25'55" West, a distance of 126.73 feet to a point on a non-tangent curve concave Easterly, having a radius of 469.77 feet, a central angle of 09°40'15" and a chord bearing of South 06°04'46" West; thence from a tangent bearing South 10°54'54" West, Southerly 79.29 feet along the arc of said curve; thence South 01°14'30" West, a distance of 92.77 feet to a point on a non-tangent curve concave Easterly, having a radius of 468.33 feet, a central angle of 08°01'18" and a chord bearing of South 02°46'10" East; thence from a tangent bearing South 01°14'29" West, Southerly 65.57 feet along the arc of said curve; thence South 29°58'36" East, a distance of 372.45 feet; thence South 44°25'26" West, a distance of 166.65 feet; thence North 87°43'34" West, a distance of 6.70 feet; thence South 44°25'26" West, a distance of 140.10 feet; thence North 89°59'13" West, a distance of 162.75 feet to the POINT OF BEGINNING. Containing 5.92 acres, more or less.

**TOGETHER WITH** the following easements and rights of use (the "**Easements**") which are hereby granted by Landlord to Tenant for the purposes described as follows:

1. **Access.** A non-exclusive easement for right of way, ingress and egress purposes over, under and across Gemini Boulevard and University Boulevard and across those areas owned by Landlord lying between the Property and the adjacent Gemini Boulevard and Alafaya Trail at approximately the Access points shown on the attached Exhibit A-1, as well all streets, drives, paths and walkways now or hereafter serving the Property and lying outside the boundaries of the Property as such may exist from time to time. Landlord agrees to maintain in

good condition and repair Gemini Boulevard and University Boulevard. Tenant shall have the right to construct and shall thereafter maintain in good condition and repair, the drives, paths and walkways which connect the Property to Gemini Boulevard, University Boulevard and the nearby Alafaya Trail. At no time will Landlord block such access other than on a temporary basis in the case of an emergency or as needed for repair (and then at all times providing a reasonable alternative ingress egress access to and from the Property to Gemini Boulevard, University Boulevard and Alafaya Trail for vehicles and pedestrians). This Easement shall continue for so long as the Sublease (as modified, amended, extended or replaced) shall continue in full force and effect.

2. **Utilities and Drainage.** A non-exclusive easement for the construction and installation of lines and appurtenant facilities for all utilities, communication services and stormwater drainage service to the Property. The construction, installation and connection of such lines and facilities shall be undertaken by Tenant at Tenant's sole cost and expense, in accordance with plans and specifications submitted to and approved by Landlord, which approval will not be unreasonably withheld or delayed. The utility and stormwater drainage facilities located off the Property shall be conveyed by the Tenant to the Landlord upon completion and approval by the Landlord, and upon transfer thereof by Bill of Sale the Landlord shall assume responsibility for the maintenance, repair and replacement of such transferred lines and facilities, and in any event shall keep all lines and facilities of Landlord to which the Tenant connects in good condition and repair at Landlord's cost and expense. Any lines constructed by Tenant which are not transferred to Landlord shall be kept in good condition and repair by Tenant at Tenant's sole cost and expense. This Easement shall continue for so long as the Sublease (as modified, amended, extended or replaced) shall continue in full force and effect.

3. **Landscaping.** An easement for landscape (including any Landlord-approved hardscape) installation, maintenance, repair and replacement in those areas adjacent to the Property and lying between the Property and nearby rights of way as shown on the attached **Exhibit A-1**. Tenant shall maintain, repair and replace all landscape improvements installed by Tenant from time to time. This Easement shall continue for so long as the Sublease (as modified, amended, extended or replaced) shall continue in full force and effect.

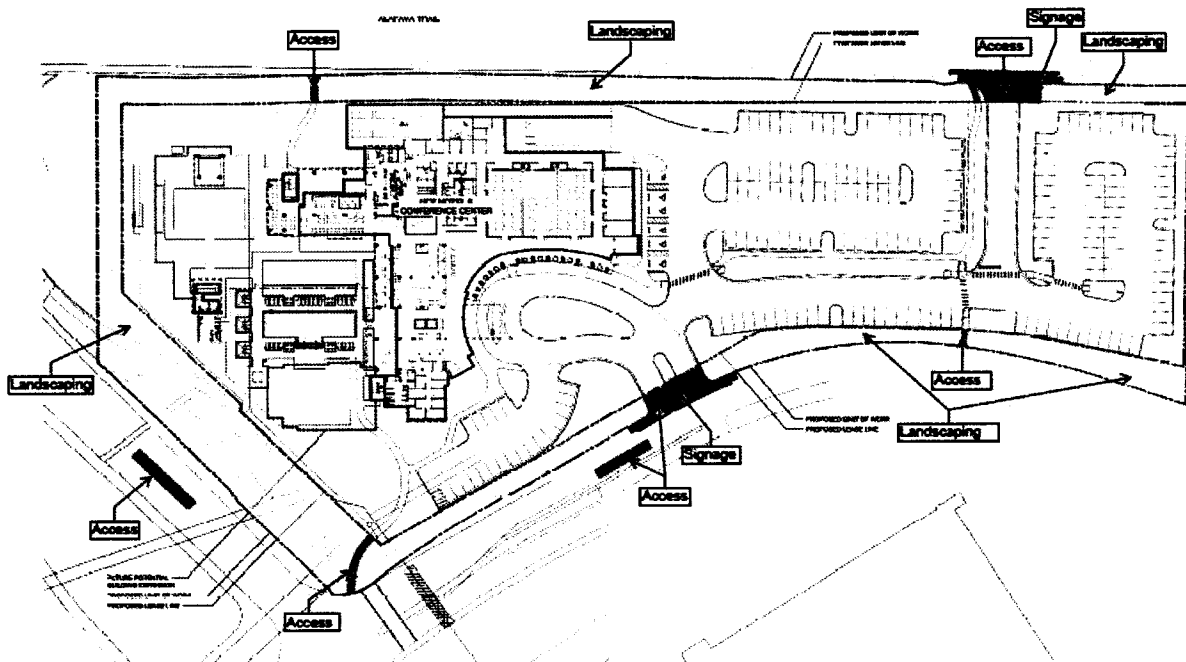
4. **Staging.** A temporary easement for staging, equipment and materials storage, construction trailer and parking over and across that portion of Landlord's property lying contiguous to and northerly of the Property, bounded on the East by Gemini Boulevard, on the North by Centaurus Boulevard, and on the West by Alafaya Trail (the "**Staging Area**"). This Easement shall continue for so long as the construction by Tenant of the Hotel/Conference Center is continuing until sixty (60) days after the construction of the Hotel/Conference Center is fully complete, at which time this Easement shall terminate. Within said sixty(60) day period, Tenant shall cause to be removed all trailers, equipment and improvements to the Staging Area, and restore the Staging Area substantially to the condition it existed prior to the Tenant's use of the Staging Area.

5. **Signage.** An exclusive easement for signage over, under and across those portions of Landlord's property located approximately as shown on the attached **Exhibit A-1**, with the right to construct, install, maintain, repair and replace thereon a sign advertising the Hotel/Conference Center and the services provided by the Hotel/Conference Center, and related

signage improvements (lighting, landscaping, etc. ), the design of which shall be subject to Landlord's approval which will not be unreasonably withheld or delayed

6. **Location; Recordable Easement(s).** The parties agree that the exact location of the easement areas encumbered by the foregoing easements shall be on such portions of the Landlord's adjacent University property as may be improved with streets, drives, paths, and walkways; with utility, communication and stormwater drainage lines and facilities; with landscaping and signage; that from time to time serve and benefit the Hotel/Conference Center Property and operation. Attached is an **Exhibit A-1** showing the location of some, but not all of the easements that will be required for development of the Hotel/Conference Center. Other easement locations will be determined upon finalizing approved utility, drainage and other plans and the locations of the easements on the attached Exhibit A-1 may change as plans are reviewed and modified through the plan approval process. If either party requests from the other an easement in recordable form that specifically locates by legal description the precise location of any easement area and reflects the easement terms set forth in this Exhibit A as to the specifics of that easement, the parties agree to execute and deliver each to the other, and record, such reasonable forms of easement as may be requested by the requesting party, subject to such edits and changes thereto as may be reasonably be requested by the other party.

**EXHIBIT A-1**  
**KNOWN EASEMENT LOCATIONS**



**This document prepared by and after  
Recording return to:**

DLA Piper LLP (US)  
444 West Lake Street  
Suite 900  
Chicago, Illinois 60606-0089  
Attn: Brian K. Doyle, Esq.

DOC# 20180518801  
08/30/2018 03:43:04 PM Page 1 of 36  
Rec Fee: \$307.50  
Deed Doc Tax: \$0.00  
DOR Admin Fee: \$0.00  
Intangible Tax: \$60,754.00  
Mortgage Stamp: \$106,319.50  
Phil Diamond, Comptroller  
Orange County, FL  
PU - Ret To: LOWNDES DROSDICK ET AL



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

**THIS SUBLEASEHOLD CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** (this "Security Instrument") is made as of August 30, 2018, by **PEGASUS HOTEL LLC**, a Delaware limited liability company (the "Borrower"), for the benefit of **FIFTH THIRD BANK**, an Ohio banking corporation, its successors and assigns, as Administrative Agent (in such capacity, "Agent") for the Lenders.

**WITNESSETH:**

Agent and the Lenders are making a loan to Borrower (the "Loan") in an amount not to exceed Thirty Million Three Hundred Seventy Seven Thousand and 00/100 Dollars (\$30,377,000) pursuant to that certain Construction Loan Agreement of even date herewith among Borrower, Agent and the Lenders, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Loan Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Loan Agreement"; any terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement). The Loan is evidenced by certain Promissory Notes in the aggregate principal amount of \$30,377,000 from Borrower to Lenders (as amended, modified, replaced or restated from time to time, collectively, the "Note"). The Loan is due and payable in full on August 30, 2022 (the "Maturity Date"), except as such date may be extended to August 30, 2024 pursuant to the terms of the Loan Agreement or accelerated pursuant to the terms hereof or of any other Loan Document (as hereinafter defined). This Security Instrument encumbers certain real estate located in Orange County, Florida, legally described on Exhibit A attached hereto, and payment of the Note is secured by this Security Instrument, financing statements and other security documents (this Security Instrument, the Note, the Loan Agreement, the Rate Management Agreement (as defined below), and all other documents evidencing or securing the Loan (as

**FLORIDA DOCUMENTARY STAMP TAXES IN THE AMOUNT OF \$106,319.50  
AND NON-RECURRING INTANGIBLE TAXES IN THE AMOUNT OF \$60,754.00  
WILL BE PAID UPON THE RECORDATION HEREOF.**



amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the “Loan Documents”). The term “Rate Management Agreements” means any agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation any ISDA Master Agreement between Borrower and Agent or any affiliate of Fifth Third Bancorp, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising and in each case, as amended, modified or supplemented from time to time. The Loan bears interest at a variable rate of interest.

To secure: (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, and all other indebtedness, loans, advances, and each and every obligation and liability evidenced by, owing, arising under or in connection with the Loan, the Loan Agreement, the Note, and/or any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the payment of all other expenses, costs, advances and indebtedness which this Security Instrument by its terms secures; (iii) the performance and observance of the covenants and agreements contained in this Security Instrument, the Loan Agreement, the Note and each of the other Loan Documents; (iv) any and all obligations of Borrower to Agent or any affiliate of Fifth Third Bancorp, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced or acquired (including renewals, extensions and modifications thereof and substitutions theretofore), under or in connection with (I) any and all Rate Management Agreements, and (II) any and all cancellations, buy-backs, reversals, terminations or assignments of any Rate Management Agreement (“Rate Management Obligations”), except for Rate Management Obligations that constitute “Excluded Swap Obligations” (as defined in the Loan Agreement); (v) all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys’ fees incurred by Agent hereunder or any other document, instrument or agreement related to any of the foregoing; and (vi) all other loans, advances, indebtedness and each and every other obligation or liability of Borrower owed to Agent and each Lender and/or any affiliate of Fifth Third Bancorp or its successors, however created, of every kind and description whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, participated in whole or in part, created by trust agreement, lease overdraft, agreement or otherwise, whether or not secured by additional collateral, whether originated with Agent or owed to others and acquired by Agent by purchase, assignment or otherwise, and all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys’ fees

incurred by Agent hereunder or any other document, instrument or agreement related hereto or to any of the foregoing; and (all of such indebtedness, obligations and liabilities identified in (i), (ii), (iii), (iv), (v) and (vi) above being hereinafter referred to as the "Obligations"); the Borrower does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto the Agent, its successors and assigns, and does hereby grant to Agent, its successors and assigns a security interest in, all of Borrower's assets, wherever and howsoever located, and all products and proceeds thereof, including, without limitation, all and singular of Borrower's right, title and interest in and to the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, and VIII below, all of same being collectively referred to herein as the "Mortgaged Property":

#### **GRANTING CLAUSE I:**

THE LEASEHOLD ESTATE created by that certain Sublease Agreement between the University of Central Florida Board of Trustees, as Landlord and Borrower, as Tenant effectively dated June 22, 2016, as amended by a First Amendment to Sublease Agreement dated June 20, 2018, and as evidenced by that certain Memorandum of Sublease executed by the University of Central Florida Board of Trustees, as Landlord, and Borrower, as Tenant, dated \_\_\_\_\_, 2018 and recorded \_\_\_\_\_, 2018 as Document No. 2018 \_\_\_\_\_ of the Public Records of Orange County, Florida (the "Leasehold Estate"), together with THE LAND located in Orange County, Florida which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

#### **GRANTING CLAUSE II:**

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Borrower now or hereafter acquired in and to any of the foregoing, including without limitation those certain improvements to be constructed on the Land in accordance with the Loan Agreement (collectively, the "Improvements");

#### **GRANTING CLAUSE III:**

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Borrower, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

**GRANTING CLAUSE IV:**

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Borrower and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring, beds, bureaus, chiffoniers, chests, chairs, desks, mirrors, tables, 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, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, facsimile machines, medical equipment, potted plants, lighting fixtures, fire prevention and extinguishing apparatus, fittings, plants, laundry machines, tools, machinery, engines, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, lockers, spotlighting equipment, garbage disposals, and other customary hotel equipment and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Borrower and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Security Instrument.

**GRANTING CLAUSE V:**

TOGETHER WITH the following (the "Personal Property"):

All personal property of every nature whatsoever now or hereafter owned by Borrower or used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Borrower in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Borrower or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Florida (as amended from time to time, the "Code");

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or the Improvements or proceeds of any sale, option or contract to sell the Land or the Improvements or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

All of the books and records pertaining to the foregoing;

#### **GRANTING CLAUSE VI:**

TOGETHER WITH all right, title and interest which the Borrower hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities and parking charges, the rendering of services by Borrower or any operator or manager of a 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 any other items of revenue, receipts and/or income as identified in the Uniform System of Accounts for the Lodging Industry, 11th Edition, published by the American Hotel and Lodging Association in conjunction with the HFTP, as from time to time amended, and all right, title and interest which the Borrower now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Borrower any statutory rights;

#### **GRANTING CLAUSE VII:**

TOGETHER WITH any and all Awards and Insurance Proceeds, as each are hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Borrower hereby authorizes, directs and empowers the Agent, at its option, on the Borrower's behalf, or on behalf of the successors or assigns of the Borrower, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in the Loan Agreement, to payment of the Obligations, notwithstanding the fact that the same may not then be due and payable or that the Obligations is otherwise adequately secured; and the Borrower

agrees to execute and deliver from time to time such further instruments as may be requested by the Agent to confirm such assignment to the Agent of any such proceeds;

**GRANTING CLAUSE VIII:**

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Borrower now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Borrower or by anyone on behalf of the Borrower to the Agent;

**TO HAVE AND TO HOLD** the Mortgaged Property, unto the Agent, and its successors and assigns; subject, however, to those encumbrances which the Agent has approved in the Loan Agreement or otherwise approved in writing (collectively, the “Permitted Encumbrances”);

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, the Borrower shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) the Borrower shall pay and perform in full when due the Obligations and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Borrower, and (ii) the Agent and Lenders shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Borrower under the provisions of the Loan Agreement, then the Agent shall execute and deliver to the Borrower such instruments as may be reasonably requested by the Borrower which are sufficient to release this Security Instrument.

THE BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **Borrower's Covenants.**

(a) **Payment of Obligations.** The Borrower shall, prior to the expiration of any grace period: (i) pay the Obligations when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Borrower as provided in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

(b) **Repair/Maintenance.** The Borrower shall (i) maintain, repair, restore, replace or rebuild any portion of the Mortgaged Property which may be damaged or destroyed in accordance with the requirements of the Loan Agreement; (ii) keep the Mortgaged Property in good condition and repair, free from physical waste; (iii) pay all operating costs and expenses of the Mortgaged Property when due; (iv) observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions

and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Mortgaged Property or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to the Borrower, which would materially increase the risk of fire or other hazard to the Mortgaged Property or any portion thereof; and (vi) cause the Mortgaged Property to be managed in a competent and professional manner.

(c) Alteration of Mortgaged Property. Without the prior written consent of the Agent or as otherwise expressly provided in the Loan Agreement, the Borrower shall not cause, suffer or permit (i) any material alteration of the Mortgaged Property, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement; (ii) any change in the zoning classification or intended use or occupancy of the Mortgaged Property; (iii) any change in the identity of the Borrower or the person or entity responsible for managing the Mortgaged Property; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Mortgaged Property, except as required to operate the Mortgaged Property in the manner required hereunder.

(d) Disposition of Assets. Borrower shall not sell, lease, transfer or otherwise dispose of, or grant any person an option to acquire, or sell and leaseback, all or any substantial portion of its assets, whether now owned or hereafter acquired, except for bona fide sales of inventory in the ordinary course of business and dispositions of property which is obsolete and not used or useful in its business.

(e) Compliance with Laws. The Borrower and/or any guarantors of the Loan ("Guarantors") shall comply with all Applicable Laws (as defined in the Loan Agreement) except to the extent that such failure to comply which could not reasonably be expected to materially adversely affect the Borrower or the Property. Borrower and/or Guarantors shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of their respective properties and the advantageous conduct of its business and as may be required from time to time by applicable law.

(f) Insurance. The Borrower shall obtain and maintain or cause to be obtained and maintained, in full force and effect at all times insurance with respect to Borrower and the Mortgaged Property as required pursuant to the Loan Agreement.

## 2. Liens, Contest and Defense of Title.

(a) The Borrower shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Encumbrances), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Security Instrument, including liens for labor or materials with respect to the Mortgaged Property (collectively, "Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section 2, the Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Security Instrument; and (ii) within ten (10) Business Days after the Borrower has been notified of the filing of any such Mechanic's Liens, the Borrower shall have notified the Agent in writing of the Borrower's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Agent, insuring the Agent against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Borrower may deposit and keep on deposit with the Agent (or such depository as may be designated by the Agent) a sum of money sufficient, in the reasonable judgment of the Agent, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Agent in its reasonable discretion to protect the priority of this Security Instrument. In case the Borrower shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Agent may, at its option, apply any money and liquidate any securities then on deposit with the Agent (or other depository designated by the Agent) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Agent's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Borrower shall forthwith, upon demand, deposit with the Agent (or other depository designated by the Agent) the sum which shall (in Agent's reasonable judgment, when added to the funds then on deposit with Agent) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Agent). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Agent has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Agent (or other depository) under this Section 2(b) shall be paid to the Borrower, provided that no Event of Default shall then exist.

(c) If the lien and security interest of the Agent in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Borrower shall immediately notify the Agent and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

### 3. Security Agreement.

(a) Grant of Security Interest. Borrower hereby grants to Agent a security interest in the Personal Property to secure the Obligations. This Security Instrument constitutes a security agreement with respect to all Personal Property in which Agent is granted a security interest hereunder, and Agent shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) Perfection. Borrower hereby consents to any instrument that may be requested by Agent to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Security Instrument or the interest of Agent in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Borrower shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Agent in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Borrower hereby irrevocably constitutes and appoints Agent as the attorney-in-fact of Borrower, to file with the appropriate filing office any such instruments. In addition, Borrower hereby authorizes Agent to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower.

(c) Place of Business. Borrower maintains its principal place of business as set forth as the address of Borrower in Section 20 below, and Borrower will notify Agent in writing of any change in its place of business within five (5) Business Days of such change.

(d) Fixture Filing. This Security Instrument is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code.

(e) Representations and Warranties. The Borrower represents and warrants that: (i) the Borrower is the record owner of the Leasehold Estate in the Mortgaged Property; (ii) the Borrower's exact legal name is as set forth on Page 1 of this Security Instrument; (iii) the Borrower's organizational identification number is 5955670, (iv) Borrower is the owner of the Personal Property subject to no liens, charges or encumbrances other than Permitted Encumbrances, and (v) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

### 4. Restrictions on Transfer.



(a) The Borrower, without the prior written consent of the Agent, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any merger or consolidation, change in capital structure, or any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a “Prohibited Transfer”:

(i) The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of collateral (“Obsolete Collateral”) no longer useful in connection with the operation of the Mortgaged Property, provided that prior to, or substantially contemporaneously with, the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) Any shares of capital stock of a corporate Borrower, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Borrower, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subsection (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers’ Automated Quotation System);

(iii) All or any part of the managing member or manager interest, as the case may be, in a limited liability company Borrower or a limited liability company which is a general partner of a partnership Borrower;

(iv) All or any part of the general partner or joint venture interest, as the case may be, of a partnership Borrower or a partnership which is a manager of a limited liability company Borrower or the conversion of a partnership Borrower to a corporation or limited liability company;

(v) Any right to receive income or proceeds from the Borrower; or

(vi) (A) If there shall be any change in Control (by way of transfers of stock, partnership or member interests or otherwise) in (x) Borrower or (y) any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of the Borrower and/or owns a controlling interest in the Borrower (including Borrower’s Manager) to a person or entity who is not a Constituent Entity or which Controls a Constituent Entity in each case as of the date hereof; or (B) if neither one, nor any combination, of Deven Pegasus Hotel, LLC, Demetree Pegasus Hotel, LLC, PHM University 2018 Hotel Investor, LLC and Kajima U.S.A. Inc. shall own at least 75% of the aggregate direct or indirect ownership interests in the Borrower; or (C) if Ronald E. Franklin and Steven J. Fairbanks directly or indirectly shall no longer Control the Manager or own at least 10% of the ownership interests in Borrower’s Manager;

or (D) if Kajima U.S.A. Inc. shall no longer own at least 25% of the ownership interests in Borrower; or if Pegasus Hotel Venture, LLC, a Delaware limited liability company, shall cease to own 100% of the ownership interests in Borrower; or if Kajima U.S.A. Inc. or PHM University 2018 Hotel Investor, LLC shall cease to Control Borrower;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this section shall not apply (x) Permitted Encumbrances, or (y) to any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives.

Notwithstanding anything that may be contained in the foregoing clauses (i) through (v) to the contrary, (A) a Permitted Transfer shall be permitted without Agent's prior written consent, but, promptly following each such transfer, Borrower shall provide notice thereof and copies of all applicable documents and agreements to Agent and copies of all applicable agreements and (B) a Permitted Conditional Transfer shall be permitted provided that the conditions contained in the definition thereof shall be satisfied in accordance herewith and provided Borrower provides notice thereof to Agent and copies of all applicable agreements.

**"Major Transferee"** shall mean any Transfer which will result in the transferee (either itself or collectively with its Affiliates) owning a 20% or greater equity interest (directly or indirectly) in Borrower (provided that any transferee which owns 20% or greater as of the date hereof shall not be a Major Transferee as to any interest thereafter acquired).

**"Permitted Conditional Transfer"** shall mean the sale or conveyance, or otherwise transferring or disposing, of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) (collectively, a **"Transfer"**) by any Person of its direct or indirect ownership interest in Borrower to any Person; provided, however, that any such Transfer shall be subject to the following conditions precedent:

- (a) such Transfer does not result in a violation of the Loan Documents or this Security Instrument, and prior to and following such Transfer, Guarantors continue to be in compliance, collectively, with the Guarantor Financial Covenants;
- (b) Agent shall have performed searches and/or received other diligence requested by Agent such that Agent (and the proposed Transfer and transferee) is

in compliance with Agent's then current "know your customer" and other regulatory requirements;

(c) if such Transfer will result in the transferee becoming a Major Transferee, Agent shall have received Satisfactory Search Results as to the transferee;

(d) Agent shall receive not less than thirty (30) days prior written notice of such proposed Transfer, together with copies of all applicable agreements;

(e) Borrower shall pay any and all reasonable out-of-pocket costs incurred by Agent in connection with such Permitted Conditional Transfer, including, without limitation, Agent's reasonable counsel fees and disbursements;

(f) Agent shall receive not less than thirty (30) days in advance, current financial information and organizational documents for any proposed transferee;

(h) prior to and following such Transfer the provisions of Section 4(a)(vi) are complied with and satisfied.

**"Permitted Transfer"** shall mean any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto, (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto and (c) mortgaging, granting, bargaining, encumbering, pledging, assigning, granting options with respect to any indirect interest in a Constituent Entity but not the foreclosure or enforcement of such interest unless such transfer at the time of such foreclosure or enforcement is otherwise a "Permitted Conditional Transfer", and the provisions of such definition are complied with, or a "Permitted Transfer".

**"Satisfactory Search Results"** shall mean the results of a credit history check, litigation, lien, bankruptcy, judgment and other similar searches with respect to the applicable transferee and its applicable affiliates, in each case, (i) revealing no matters which would have a material adverse effect on Borrower's financial condition, the value, use or operation of the Property; (ii) demonstrating that any transferee is not on an OFAC SDN List and (iii) yielding results which are otherwise acceptable to Agent in its reasonable discretion and comply with all applicable legal and regulatory requests of Agent.

(b) In determining whether or not to make the Loan, the Agent evaluated the background and experience of the Borrower and its manager in owning and operating property such as the Mortgaged Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Property which is

the Lenders' security for the Note. The Borrower and its manager and members are well experienced in borrowing money and owning and operating property such as the Mortgaged Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Borrower recognizes that the Lenders are entitled to keep their loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Borrower. The Borrower further recognizes that any secondary junior financing placed upon the Mortgaged Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Agent to take measures and incur expenses to protect its security; (iii) would detract from the value of the Mortgaged Property should the Agent come into possession thereof with the intention of selling same; and (iv) would impair the Agent's right to accept a deed in lieu of foreclosure, as a foreclosure by the Agent would be necessary to clear the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (a) protecting the Agent's security, both of repayment and of value of the Mortgaged Property; (b) giving the Agent the full benefit of its bargain and contract with the Borrower; (c) allowing the Agent to raise the interest rate and collect assumption fees; and (d) keeping the Mortgaged Property free of subordinate financing liens, the Borrower agrees that if this section is deemed a restraint on alienation, that it is a reasonable one.

5. **Events of Default.** Any one or more of the following events shall constitute an "Event of Default" under this Security Instrument:

(a) If a Prohibited Transfer shall occur; or

(b) If any Event of Default occurs under the Loan Agreement or any other Loan Document including without limitation, nonpayment by Borrower of any Rate Management Obligation when due or the breach by Borrower of any term, provision or condition contained in any Rate Management Agreement.

6. **Remedies.** Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) **Acceleration.** Agent may declare the outstanding principal balance of the Note and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind (and upon the occurrence of any Event of Default described in Section 11.1(e) of the Loan Agreement, such indebtedness shall automatically become due and payable without any action by Agent).

(b) Uniform Commercial Code. Agent shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of the Code for reasonable notification shall be met by mailing written notice to Borrower at its address set forth in Section 20 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Agent elects. The Borrower hereby agrees that if the Agent demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Borrower will promptly turn over and deliver possession thereof to the Agent, and the Borrower authorizes, to the extent the Borrower may now or hereafter lawfully grant such authority, the Agent, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Agent may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute additional Obligations and shall be payable upon demand with interest at the Default Rate until paid to Agent.

(c) Foreclosure. Agent may proceed to protect and enforce the rights of Agent hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Security Instrument. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Obligations in the decree of sale, all expenditures and expenses authorized by Chapter 702 of the Florida Statutes, as from time to time amended, and any other applicable laws governing the foreclosure of mortgages (the "Foreclosure Laws") and all other expenditures and expenses which may be paid or incurred by or on behalf of Agent for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title

to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by Agent in any litigation or proceedings affecting this Security Instrument, the Note, any of the other Loan Documents or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be additional Obligations and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid to Agent.

(d) Appointment of Receiver. Agent shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Foreclosure Laws of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Agent, Borrower shall surrender to Agent and Agent may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Foreclosure Laws, and Agent, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Foreclosure Laws may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Agent and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Security Instrument without Agent's prior written consent;

(iv) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Agent, to insure and reinsure the Mortgaged Property and all risks incidental to Agent's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of Taxes, Premiums and other charges applicable to the Mortgaged Property, or in reduction of the Obligations in such order and manner as Agent shall select, in its sole discretion; and

(vii) receive and collect the rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Borrower agrees to consent to a receiver if it is believed necessary or desirable by the Agent to enforce its rights under this subsection. The collection of rents, issues, profits or revenues of the Mortgaged Property by the Agent shall in no way waive the right of the Agent to foreclose this Security Instrument in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Agent a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall

be in addition to all other rights or remedies of Agent hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay upon demand together with interest thereon at the Default Rate until paid to Agent. Agent shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Agent. Without taking possession of the Mortgaged Property, Agent may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate or as required by any Applicable Laws to register, maintain, repair, protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Obligations payable upon demand with interest thereon at the Default Rate.

(f) **Indemnity.** The Borrower hereby agrees to indemnify, defend, protect and hold harmless the Agent and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Agent seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Agent, its employees, officers or agents.

**7. Compliance with Foreclosure Laws.**

(a) In the event that any provision in this Security Instrument shall be inconsistent with any provision of the Foreclosure Laws, the provisions of the Foreclosure Laws shall take precedence over the inconsistent provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Foreclosure Laws.

(b) If any provision of this Security Instrument shall grant to Agent any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Agent under the Foreclosure Laws in the absence of said provision, Agent shall be vested with the rights granted in the Foreclosure Laws to the full extent permitted by law.

**8. Waiver of Right to Redeem - Waiver of Appraisement, Valuation, Etc.**

Borrower shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "**Moratorium Laws**," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged



Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Agent may determine in its sole discretion. Agent shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Agent so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Agent with the amount payable to Agent out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Obligations, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Security Instrument, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Florida Statutes, Section 45.031, and (ii) any and all rights of reinstatement.

9. **Costs and Expenses of Foreclosure.** In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Agent for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Agent may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become additional Obligations which Borrower agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid to Agent at the Default Rate.

10. **Protective Advances.**

(a) Advances, disbursements and expenditures made by Agent for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Security Instrument, constitute "Protective Advances":

(i) all advances by Agent in accordance with the terms of this Security Instrument to: (A) register, preserve or maintain, repair, restore or rebuild the Improvements upon the Mortgaged Property; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument;

(ii) payments by Agent of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of Taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any

other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property;

(iii) advances by Agent in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Security Instrument; (B) in connection with any action, suit or proceeding brought by or against the Agent for the enforcement of this Security Instrument or arising from the interest of the Agent hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Agent's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the filing of a certificate of sale by the clerk of the court;

(vi) advances of any amount required to make up a deficiency in deposits for installments of Taxes and assessments and Premiums as may be authorized by this Security Instrument;

(vii) expenses properly deductible from proceeds of sale; and

(viii) expenses incurred and expenditures made by Agent for any one or more of the following: (A) Premiums for casualty and liability insurance paid by Agent whether or not Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate; (B) repair or Restoration of damage or destruction in excess of available Insurance Proceeds or Awards; (C) payments required or deemed by Agent to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; or (E) pursuant to any Lease or other agreement for occupancy of the Mortgaged Property.

(b) All Protective Advances shall be additional Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Foreclosure Laws, apply to and be included in the:

- (i) determination of the amount of Obligations at any time;
- (ii) indebtedness found due and owing to the Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds;
- (iv) application of income in the hands of any receiver or mortgagee in possession; and
- (v) computation of any deficiency judgment.

11. **Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 6(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 6(c) and Section 9 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Obligations with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

12. **Rights Cumulative.**

(a) Each right, power and remedy herein conferred upon the Agent is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Agent.

(b) By accepting payment of any sums secured by this Security Instrument after the due date thereof, by accepting performance of any of the Borrower's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Borrower which the Borrower was obligated but failed to perform or pay, the Agent shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Borrower's obligations under this Security Instrument, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Security Instrument shall be binding on the Agent unless set forth in writing signed by the Agent and any such waiver by the Agent of any Event of Default by the Borrower under this Security

Instrument shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Agent holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by the Agent shall release, discharge, modify, change or otherwise affect the liability of Borrower under the Note, this Security Instrument, or any of the other Loan Documents, or any other obligation of the Borrower, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Agent from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Security Instrument or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Agent. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Agent in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Agent by this Security Instrument is not required to be given.

### 13. **Successors and Assigns; Assignment.**

(a) This Security Instrument and each and every provision hereof shall be binding upon the Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Agent and its successors and assigns.

(b) All of the covenants of this Security Instrument shall run with the interest of the lessee under the Ground Lease and shall be binding on any successor holders of the interest of the lessee under the Ground Lease. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Borrower, the Agent may, without notice to the Borrower, deal with such successor or successors in interest of the Borrower with reference to this Security Instrument and the Obligations in the same manner as with the Borrower without in any way releasing or discharging the Borrower from its obligations hereunder. The Borrower will give immediate written notice to the Agent of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 4 hereof.

(c) The rights and obligations of Borrower under this Security Instrument may not be assigned and any purported assignment by Borrower shall be null and void. Agent shall have the right to sell, assign or transfer portions of its right, title and/or interest in and

to this Security Instrument and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Borrower, and Borrower agrees to cooperate in all respects with Agent in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Agent or such transferee provided that such documents and instruments do not materially adversely affect any of Borrower's duties or obligations under this Security Instrument and the other Loan Documents.

**14. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.**

(a) The Borrower will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Agent shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Agent all property mortgaged hereby or property intended so to be, whether now owned by the Borrower or hereafter acquired. Without limitation of the foregoing, the Borrower will assign to the Agent, upon request, as further security for the Obligations, its interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments reasonably satisfactory to the Agent, but no such assignment shall be construed as a consent by the Agent to any agreement, contract, license or permit or to impose upon the Agent any obligations with respect thereto.

(b) From time to time, the Borrower will furnish, within ten (10) Business Days after request from the Agent, a written and duly acknowledged statement of the amount due under the Note, this Security Instrument and the other Loan Documents and whether any alleged offsets or defenses exist against the Obligations.

(c) The Borrower and the Agent shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Security Instrument or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by the Agent or the Borrower, as the case may be, to correct such defect, error or omission.

**15. Subrogation.** If any part of the Obligations is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment, the Agent shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

**16. Governing Law.** The validity, enforcement and interpretation of this Security Instrument shall for all purposes be governed by and construed in accordance with the laws of the State of Florida, without reference to the conflicts of law principles of that State, and applicable

United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws.

17. **Business Loan.**

(a) The Borrower declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Security Instrument are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Security Instrument invalid or unenforceable under the provisions of any applicable law.

18. **Assignment of Leases and Other Agreements Affecting the Mortgaged Property.** In order to further secure payment of the Obligations and the observance, performance and discharge of the Borrower's obligations under the Loan Documents, the Borrower hereby assigns to the Agent all of the Borrower's right, title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases, or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even date herewith from Borrower to and for the benefit of Agent. Unless and until an Event of Default occurs, the Borrower shall be entitled to collect the Rents and Profits (except as otherwise provided in this Security Instrument) as and when they become due and payable. Neither these assignments nor Agent's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Security Instrument to any of the rights of any tenant or other party to any other agreement affecting the use, enjoyment or occupancy of the Mortgaged Property of all or any part of the Mortgaged Property, or to subject Agent to any liability to any such tenant for the performance of any obligations of Borrower under any such Lease or other agreement affecting the Mortgaged Property unless and until Agent agrees to such subordination or assumes such liability by an appropriate written instrument.

19. **Environmental Matters.** Concurrently herewith, Borrower and Guarantor shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Agent (the "**Environmental Indemnity Agreement**"). The performance of the covenants, undertakings and obligations of the indemnitors under the Environmental Indemnity Agreement shall be secured by this Security Instrument.

20. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage

prepaid, return receipt requested, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Either party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications:

To Agent:	Fifth Third Bank 222 South Riverside Plaza Chicago, Illinois 60606 Attn: Lauren Smetana
With copy to:	DLA Piper LLP (US) 444 West Lake Street, Suite 900 Chicago, Illinois 60606-0089 Attn: Brian K. Doyle, Esq.
To Borrower:	Pegasus Hotel LLC c/o Development Ventures Group 350 Fifth Avenue, Suite 5340 New York, New York 10118 Attn: Dennis Biggs Email: <a href="mailto:DBiggs@DevenGroup.us">DBiggs@DevenGroup.us</a>
With copy to:	Lowndes, Drosdick, Doster, Kantor & Reed, P.A. PO Box 2809 Orlando, Florida 32801-2809 Attn: Mark Heimendinger

21. **Releases.**

(a) Upon payment in full of all sums due under the Note and this Security Instrument and the other of the Loan Documents, the Agent shall, upon the request of, and at the cost of, the Borrower, execute a proper release of this Security Instrument.

(b) The Agent may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Security Instrument without in any manner affecting or impairing the lien or priority of this Security Instrument as to the remainder of the Mortgaged Property not so released.

22. **Indemnification by the Borrower.** The Borrower shall protect and indemnify the Agent from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Agent or the members, partners, shareholders, directors, officers, agents or employees of the Agent by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident

to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Borrower or any Guarantor to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Security Instrument, the Note, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower, or any Guarantor, or any other persons directly or indirectly liable for the payment of the Obligations, (d) any failure on the part of the Borrower to perform or comply with (i) any other agreement executed by the Borrower or any guarantor of the Note, or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of the Agent in and to the Mortgaged Property, (f) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against the Agent attacking the validity, priority or enforceability of this Security Instrument, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower, any Guarantor, or any other persons directly or indirectly liable for the payment of the Obligations. Any amounts payable to the Agent under this paragraph shall bear interest at the Default Rate until paid to Agent and shall be secured by this Security Instrument. In the event any action, suit or proceeding is brought against the Agent or the members, partners, shareholders, directors, officers, agents or employees of the Agent by reason of any such occurrence, the Borrower, upon the request of the Agent and at Borrower's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Borrower and approved by the Agent. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Security Instrument.

23. **Miscellaneous.**

(a) **Time is of the Essence.** Time is of the essence of this Security Instrument.

(b) **Captions and Pronouns.** The captions and headings of the various Sections of this Security Instrument are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) **Agent Not a Joint Venturer or Partner of Borrower.** The Borrower and the Agent acknowledge and agree that in no event shall the Agent be deemed to be a partner or joint venturer with the Borrower. Without limitation of the foregoing, the Agent shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any other instrument or document evidencing or securing any of the Obligations, or otherwise.

(d) **Replacement of the Note.** Upon notice to the Borrower of the loss, theft, destruction or mutilation of the Note, the Borrower will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of



the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.

(e) Waiver of Consequential Damages. The Borrower covenants and agrees that in no event shall the Agent be liable for consequential damages, whatever the nature of a failure by the Agent to perform its obligation(s), if any, under the Loan Documents, and the Borrower hereby expressly waives all claims that it now or may hereafter have against the Agent for such consequential damages.

(f) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

(g) Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Security Instrument except that if such provision relates to the payment of any monetary sum, then the Agent may, at its option declare the Obligations immediately due and payable.

(h) Interpretation of Agreement. Should any provision of this Security Instrument require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Security Instrument, including, without limitation, all Exhibits attached to this Security Instrument.

(i) Joint and Several Obligations; Counterparts. If this Security Instrument is executed by more than one Borrower, (i) the obligations and liabilities of Borrower under this Security Instrument shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns, and (ii) this Security Instrument may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Security Instrument.

(j) Effect of Extensions and Amendments. If the payment of the Obligations, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Agent, notwithstanding any such extension, variation or release.

(k) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Agent a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by the Agent pursuant to this Security Instrument.

(l) Merger. So long as any of the Obligations shall remain unpaid, unless Agent shall consent otherwise in writing, the fee title and the leasehold estate to the Mortgaged Property shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the lessor or in the tenant, or in a third party, by purchase or otherwise. Borrower covenants and agrees that, if Borrower shall acquire the fee title, or any other estate, title or interest in the Mortgaged Property covered by said Ground Lease, this Security Instrument shall be considered as mortgaged, assigned or conveyed to Agent and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread. The provisions of this paragraph shall not apply if Agent acquires the fee of the Mortgaged Property unless Agent shall so elect.

(m) Complete Agreement. This Security Instrument, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Borrower and the Agent.

(n) Further Assurances. Borrower shall execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other actions, as shall be reasonably necessary from time to time to give full effect to the Loan Documents and the transactions contemplated hereby and thereby.

24. **JURISDICTION AND VENUE**. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS SECURITY INSTRUMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF ORANGE COUNTY, FLORIDA, OR THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA OR, IF AGENT INITIATES SUCH ACTION, ANY COURT IN WHICH AGENT SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY AGENT IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS SECURITY INSTRUMENT. BORROWER WAIVES ANY CLAIM THAT ORANGE COUNTY, FLORIDA OR THE MIDDLE DISTRICT OF FLORIDA IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING

THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY AGENT AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY AGENT OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY AGENT OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

25. **Waiver of Jury Trial.** BORROWER AND AGENT, BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND AGENT ARISING OUT OF OR IN ANY WAY RELATED TO THIS SECURITY INSTRUMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND AGENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO AGENT TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

26. **Additional Waivers.** BORROWER EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY AGENT ON THIS SECURITY INSTRUMENT, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY AGENT.

27. **Compliance with Loan Agreement.** Borrower will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

28. **Provisions of Loan Agreement.** The proceeds of the Note are to be disbursed by the Agent in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Borrower covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Borrower for the enforceability of this Security Instrument, the Note and the other Loan Documents, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Security Instrument; provided, however, that the total Obligations secured hereby shall not in any event exceed two hundred percent of the stated principal amount of the Note.

29. **State Law Provisions.** The following provisions are incorporated by reference into this Security Instrument. If any conflict or inconsistency exists between this Article and the remainder of this Security Instrument, this Article shall govern.

(a) **Future Advances.** This Security Instrument is given to secure not only the Loan, but also such future advances, whether such advances are obligatory or are to be made at the option of Agent or the holder hereof, or otherwise as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Security Instrument. The total amount of Loan that may be so secured by this Security Instrument may be increased or decreased from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, plus interest thereon, and any disbursements made under this Security Instrument for the payment of impositions, taxes, assessments, levies, insurance, or otherwise with interest on such disbursements at the rate set forth in the Note, plus any increases in the principal balance as the result of negative amortization or deferred interest, if any. It is agreed that any additional sum or sums advanced by Lender pursuant to the terms hereof shall be equally secured with and have the same priority as the original Loan and shall be subject to all of the terms, provisions and conditions of this Security Instrument, whether or not such additional loans or advances are evidenced by other promissory notes or other guaranties of Borrower and whether or not identified by a recital that it or they are secured by this Security Instrument. It is further agreed that any additional promissory note or guaranty or promissory notes or guaranties executed and delivered pursuant to this section shall automatically be deemed to be included in the term "Note" wherever it appears in the context of this Security Instrument. Without the prior written consent of Agent, which Agent may grant or withhold in its sole discretion, Borrower shall not file or record any notice limiting the maximum principal amount that may be secured by this Security Instrument to a sum less than the maximum principal amount set forth in this section.

(b) **Foreclosure.** In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the judgment of foreclosure, all expenditures and expenses which may be paid or incurred by or on behalf of Agent for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Agent in any litigation or proceedings affecting this Security Instrument, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or

otherwise in dealing specifically therewith, shall be so much additional indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

(c) Additional Property. All right, title, and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutions, and replacements of, and all additions and appurtenances to the Mortgaged Property, hereafter acquired by, or conveyed to, Borrower or constructed, assembled, or placed by Borrower upon the Land, immediately upon such acquisition, conveyance, construction, assembling or placement, as the case may be, and in each such case, without any further mortgage, conveyance, assignment, or other act by Borrower, shall become subject to the lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Borrower and specifically described in the granting clause of this Security Instrument, but at any and all times Borrower will execute and deliver to Agent any and all such further assurances, mortgages, conveyances, or assignments thereof, as Agent may require for the purpose of expressly and specifically subjecting the same to the lien of this Security Instrument.

(d) Deficiency Judgment. In addition to the other rights provided in this Security Instrument, Agent shall have the right to exercise its right to an action for a deficiency judgment.

(e) Foreclosure Sale. The purchaser at any foreclosure sale shall become the legal owner of the Mortgaged Property. Agent is authorized to foreclose this Security Instrument subject to the rights of any purchasers or tenants, if any, of the Mortgaged Property or may elect which purchasers or tenants Agent desires to name as defendants in such foreclosure and the failure to make any such purchasers or tenants defendants to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Borrower to be, a defense to any proceedings instituted by Agent to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

(f) Assignment of Leases and Rents. The assignments of Leases and Rents contained in this Security Instrument are intended to provide Agent with all the rights and remedies of mortgagees pursuant to Section 697.07 of the Florida Statutes (hereinafter "Section 697.07"), as may be amended from time to time. However, in no event will this reference diminish, alter, impair, or affect any other rights and remedies of Agent, including but not limited to, the appointment of a receiver as provided herein, nor will any provision herein, diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth elsewhere in this Security Instrument. In addition, this assignment will be fully operative without regard to the value of the Mortgaged Property or without regard to the adequacy of the Mortgaged Property to serve as security for the obligations owed by Borrower to Agent, and will be in addition to any rights arising under Section 697.07. Further, except for the notices required hereunder, if any, Borrower waives, except as may be prohibited by law, any notice of default or demand for turnover of Rents by Agent, together with any rights under Section 697.07 to apply to a court to

deposit the Rents into the registry of the court or such other depository as the court may designate.

(g) Stamp Tax.

(i) Payment by Borrower. Upon recordation of this Security Instrument, Borrower shall pay Florida Documentary Stamp Tax and Non-Recurring Intangibles Tax as required by the State of Florida, in the amount set forth on the cover page of this Security Instrument. If at any time the United States Government, or any other federal, state, county or municipal governmental subdivision, shall require additional documentary stamps or intangible tax or any other tax hereon or on the Note secured hereby, then the indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Agent sixty (60) days after the mailing of notice of such election to Borrower; provided, however, that this Security Instrument and the Note shall be and remain in effect, if Borrower shall lawfully pay for such stamps or such tax including interest and penalties thereon to or on behalf of Agent and Borrower does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

(ii) Change in Tax Laws. If, by the laws of the United States of America, or of any other state, county or municipality having jurisdiction over Agent, Borrower or the Mortgaged Property, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Security Instrument, Borrower shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or imposing upon Agent the payment of the whole or any part of the taxes required to be paid by the Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Agent in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Security Instrument, the indebtedness hereby secured or Agent, then, and in any such event, Borrower, upon demand by Agent, shall pay such taxes, or reimburse Agent therefor on demand, unless Agent determines, in Agent's sole and exclusive judgment, that such payment or reimbursement by Borrower is unlawful; in which event the indebtedness hereby secured shall be due and payable within sixty (60) days after written demand by Agent to Borrower. Nothing in this Section shall require Borrower to pay any income, franchise or excise tax imposed upon Agent, excepting only such which may be levied against the income of Agent as a complete or partial substitute for taxes required to be paid by Borrower pursuant hereto.

30. Construction Loan. The Note evidences a debt created by one or more disbursements made by Agent to Borrower to finance the cost of the construction of certain Improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Security Instrument is a construction mortgage as such term is defined in Section 9-334(h) of the Code.

31. **Ground Lease Covenants.**

- (a) Borrower shall pay or cause to be paid all rents, additional rents, taxes, assessments, water rates, sewer rents, and other charges and impositions payable by the tenant under the Ground Lease, when and as often as the same shall become due and payable.
- (b) Borrower shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Ground Lease by the tenant under the Ground Lease to be kept and performed and in all respects conform to and comply with the terms and conditions of the Ground Lease, and Borrower further covenants that it shall not do or permit anything which will impair or tend to impair the security of this Security Instrument or will be grounds for declaring a forfeiture or termination of the Ground Lease, and any such failure aforesaid shall constitute an Event of Default under the terms hereof and the entire Obligations, at the option of Agent, shall become due and payable forthwith and without notice. Without limiting the generality of the foregoing, Borrower shall not cause or permit the term of the Ground Lease to expire. In addition, in the event of any casualty or condemnation, Borrower shall comply with (and shall exert commercially reasonable efforts to cause Ground Lessor to comply with) the provisions of the Ground Lease regarding insurance or condemnation awards and proceeds, respectively.
- (c) Without Agent's prior written consent, Borrower shall not modify, amend, extend or in any way alter the terms of the Ground Lease or cancel or surrender said Ground Lease, or waive, execute, condone or in any way release or discharge the Ground Lessor of or from the obligations, covenants, conditions and agreements by said lessor to be done and performed; and any attempt on the part of Borrower to exercise any such right without the prior written approval and consent of Agent thereto being first had and obtained shall constitute an Event of Default under the terms hereof and the entire Obligations, at the option of Agent, shall become due and payable forthwith and without notice.
- (d) The Obligations shall immediately become due and payable at the option of Agent, if a default occurs under the Ground Lease beyond any applicable notice and cure periods, if Borrower fails to give Agent promptly (and, in any event, within three (3) Business Days) notice of any default under the Ground Lease of which it has knowledge or of the receipt by it of any written notice of default and the expiration of any applicable notice and cure periods from the Ground Lessor, or if Borrower fails to furnish to Agent promptly (and, in any event, within three (3) Business Days following request therefor by Agent) any and all information which it may reasonably request concerning the performance by Borrower of the covenants of the Ground Lease, or if Borrower fails to permit Agent or its representative at all reasonable times and upon reasonable prior written notice to Borrower (to the extent no Event of Default has occurred and is continuing) to make investigation or examination concerning the performance by Borrower of the covenants of the

Ground Lease, or if Borrower fails to permit Agent or its representative at all reasonable times and upon reasonable prior written notice to Borrower (to the extent no Event of Default has occurred and is continuing) to make investigation or examination concerning such performance. Borrower shall deliver to Agent a certified copy of the Ground Lease and shall use commercially reasonable efforts to obtain an estoppel certificate from the Ground Lessor within ten (10) business days (or such longer time as provided in the Ground Lease) after the date on which requested by Agent and in such form and content as Ground Lessor has agreed to provide in accordance with the Ground Lease, and Borrower further agrees to use commercially reasonable efforts to have Ground Lessor address such other items as Agent may request, in each case as shall be satisfactory to Agent, and Borrower shall also provide any and all documentary evidence received by it showing compliance by Borrower with the provisions of the Ground Lease.

- (e) In the event of any failure by Borrower to timely perform any covenant on the part of the tenant to be observed and performed under the Ground Lease, Agent shall be permitted to perform such covenant and the performance by Agent on behalf of Borrower of the Ground Lease covenants shall not remove or waive, as between Borrower and Agent, the corresponding Event of Default under the terms hereof and any amount so advanced by Agent or any costs incurred in connection therewith, with interest thereon at the Default Rate, shall constitute additional Debt and shall be immediately due and payable.
- (f) To the extent permitted by law, the price payable by Borrower, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Agent, on behalf of Borrower, as lessee under said Ground Lease.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**



**IN WITNESS WHEREOF**, the Borrower has caused this Security Instrument to be duly executed and delivered as of the day and year first above written.


**BORROWER:**

**PEGASUS HOTEL LLC**, a Delaware limited liability company


By: Pegasus Hotel Venture LLC, a Delaware limited liability company, Manager

By: PHM University 2018 Hotel Investor LLC, a Florida limited liability company, Manager

By: PHM University 2018 Hotel Manager LLC, a Florida limited liability company, Manager

By:   
Name: Steven J. Fairbanks  
Title: Manager

**Witnesses:**

Print Name:   
Denna Fairbanks

Print Name:   
Mary Fairbanks

STATE OF Maryland )  
COUNTY OF Montgomery ) SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Steven J. Fairbanks, the Manager of PHM University 2018 Hotel Manager LLC, a Florida limited liability company, the Manager of PHM University 2018 Hotel Investor LLC, a Florida limited liability company, the Manager of Pegasus Hotel Venture LLC, a Delaware limited liability company, the Manager of PEGASUS HOTEL LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of August, 2018.

Mary J. Fairbanks  
Notary Public

My Commission Expires:  
My Commission Expires  
June 06, 2021



**EXHIBIT "A"****LEGAL DESCRIPTION**

The land referred to herein below is situated in the County of Orange, State of Florida, and is described as follows:

A portion of Section 3, Township 22 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at the South Quarter Corner of Section 3, Township 22 South, Range 31 East, Orange County, Florida; thence South 89°30'24" West, a distance of 1195.08 feet along the South line of the Southwest Quarter of said Section 3 to a point on the Easterly Right of Way of State Road 434 per Florida Department of Transportation Right of Way Map Section 75037-2501; thence the following four (4) courses and distances along said Easterly Right of Way: North 14°50'32" West, a distance of 65.92 feet; thence North 59°24'26" West, a distance of 60.17 feet to a point on a non-tangent curve concave Westerly, having a radius of 11394.16 feet, a central angle of 00°10'34" and a chord bearing of North 01°18'40" East; thence from a tangent bearing North 01°23'57" East, Northerly 35.02 feet along the arc of said curve to the point of tangency thereof; thence North 01°13'23" East, a distance of 79.61 feet; thence departing said Right of Way South 89°59'13" East, a distance of 23.99 feet to the POINT OF BEGINNING; thence North 01°12'54" East, a distance of 54.20 feet; thence North 01°04'23" West, a distance of 199.25 feet; thence North 01°02'40" East, a distance of 122.77 feet; thence North 00°09'44" East, a distance of 375.75 feet; thence North 00°37'14" East, a distance of 270.62 feet; thence South 88°42'25" East, a distance of 287.70 feet; thence South 28°12'37" West, a distance of 128.74 feet; thence South 11°25'55" West, a distance of 126.73 feet to a point on a non-tangent curve concave Easterly, having a radius of 469.77 feet, a central angle of 09°40'15" and a chord bearing of South 06°04'46" West; thence from a tangent bearing South 10°54'54" West, Southerly 79.29 feet along the arc of said curve; thence South 01°14'30" West, a distance of 92.77 feet to a point on a non-tangent curve concave Easterly, having a radius of 468.33 feet, a central angle of 08°01'18" and a chord bearing of South 02°46'10" East; thence from a tangent bearing South 01°14'29" West, Southerly 65.57 feet along the arc of said curve; thence South 29°58'36" East, a distance of 372.45 feet; thence South 44°25'26" West, a distance of 166.65 feet; thence North 87°43'34" West, a distance of 6.70 feet; thence South 44°25'26" West, a distance of 140.10 feet; thence North 89°59'13" West, a distance of 162.75 feet to the POINT OF BEGINNING.

TOGETHER WITH those easements granted for the benefit of the insured property as set forth in the unrecorded Sublease Agreement as evidenced by the Memorandum of Sublease between THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES and PEGASUS HOTEL LLC recorded on AUGUST 30, 2018 as Document No. 20180518199 of the Public Records of Orange County, Florida.

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

DLA Piper LLP (US)  
444 West Lake Street  
Suite 900  
Chicago, Illinois 60606-0089  
Attn: Brian K. Doyle, Esq.

DOC# 20180518802  
08/30/2018 03:43:04 PM Page 1 of 12  
Rec Fee: \$103.50  
Deed Doc Tax: \$0.00  
DOR Admin Fee: \$0.00  
Intangible Tax: \$0.00  
Mortgage Stamp: \$0.00  
Phil Diamond, Comptroller  
Orange County, FL  
PU - Ret To: LOWNDES DROSDICK ET AL



**ASSIGNMENT OF LEASES AND RENTS**

**THIS ASSIGNMENT OF LEASES AND RENTS** (this "Assignment") is made as of August 30, 2018 by and from **PEGASUS HOTEL LLC**, a Delaware limited liability company ("Borrower"), to and for the benefit of **FIFTH THIRD BANK**, an Ohio banking corporation, its successors and assigns, as Administrative Agent (in such capacity "Agent") for the Lenders.

**RECITALS:**

A. Borrower is the owner of a sub-leasehold estate in certain real property located in Orange County, State of Florida more particularly described in Exhibit A attached hereto ("Property").

B. Pursuant to that certain Construction Loan Agreement of even date herewith among Borrower, Agent and the Lenders (together with all renewals, amendments, modifications, increases and extensions thereof, the "Loan Agreement"), Agent and the Lenders have agreed to make a construction loan to Borrower in the principal amount of \$30,377,000 (the "Loan"). The Loan is evidenced by certain Promissory Notes from Borrower and payable to the order of Lenders in the original aggregate principal amount of \$30,377,000 (together with all renewals, amendments, modifications, increases and extensions thereof, collectively, the "Note").

C. The Loan is secured by: (i) that certain Subleasehold Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents of even date herewith on the Property (the "Security Instrument"), and (ii) certain other documents evidencing or securing the Loan (together with the Note, the Loan Agreement and the Security Instrument, as amended, modified, replaced or restated from time to time, the "Loan Documents").

D. Borrower is required as a condition to the making of the Loan to transfer and assign to Agent all of Borrower's right, title and interest in, to and under the Leases and Rents (as defined below).

**AGREEMENT:**

**NOW, THEREFORE**, as an inducement for the making of the Loan, Borrower hereby represents, warrants, covenants and agrees as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

“**Event of Default**” means (i) any default hereunder, after the expiration of any cure periods expressly provided for herein, or (ii) an Event of Default, as defined in the Loan Agreement.

“**Leases**” means, except for the Ground Lease, all leases, subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Property, and includes (a) any supplement, modification, amendment, renewal or extension of any Lease and (b) any security or guaranty for any Lease.

“**Lessees**” means the lessees under the Leases or any subtenants or occupants of the Property.

“**Rents**” means all rents, issues, income, revenues, royalties, profits and other amounts now or in the future payable under any of the Leases, including those past due and unpaid.

Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement.

2. **Assignment.** As security for the payment and performance of the Obligations, Borrower hereby absolutely and unconditionally transfers, sets over and assigns to Agent all present and future right, title and interest of Borrower in, to and under the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Borrower under any of the Leases and all other rights and interests of Borrower under or in respect of any of the Leases. This Assignment is intended to be and is an absolute present assignment from Borrower to Agent, it being intended hereby to establish a complete and present transfer of all Leases and Rents with the right, but without the obligation, to collect all Rents.

3. **License.** Except as hereinafter set forth, Borrower shall have a license to collect the Rents accruing under the Leases as they become due (“**License**”), but no more than one (1) month in advance, and to enforce the Leases. The License shall automatically terminate upon the occurrence of an Event of Default. Borrower covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the reasonable expenses of owning, maintaining, repairing, operating and renting the Property, and then to payment of the Obligations.

4. **Representations and Warranties.** Borrower hereby represents and warrants to Agent that to the extent that any Leases exist: (a) Borrower is the absolute owner of the entire lessor’s interest in each of the Leases, with absolute right and title to assign the Leases and the Rents; (b) to Borrower’s knowledge, the Leases are valid, enforceable and in full force and effect and have not been modified, amended or terminated; (c) there are no outstanding assignments or pledges of the Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (d) there are no existing defaults under the provisions of the Leases on the part of the lessor and to Borrower’s knowledge, there are no existing defaults under the

provisions of the Leases on the part of the Lessees thereunder; (e) to Borrower's knowledge, no Lessee has any defense, set-off or counterclaim against Borrower; (f) except as disclosed in writing to Agent, no Lessee has any purchase option or first refusal right or any right or option for additional space with respect to the Property; (g) Borrower has not accepted prepayments of installments of rent or any other charges under any Lease for a period of more than one (1) month in advance; and (h) to Borrower's knowledge, except as otherwise disclosed to Agent in writing, all work required to be performed by Borrower, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

5. **Covenants of Borrower.**

(a) **New Leases and Lease Terminations and Modifications.** Borrower shall not enter into, cancel, surrender, terminate, amend or modify any Lease for space in excess of 1,000 square feet, or make any subsequent assignment or pledge of a Lease, or consent to the subordination of the interest of any Lessee in any such Lease, or consent to any assignment by any such Lessee or any subletting, without the prior written consent of Agent, except as expressly permitted in the Loan Agreement. Any attempt to do any of the foregoing without the prior written consent of Agent (if such consent is required) shall be null and void.

(b) **Performance under Leases.** Borrower shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Borrower shall not do or suffer to be done anything to impair the security thereof. With respect to any Lease over 1,000 square feet Borrower shall not (i) release the liability of any Lessee under any such Lease or any guaranty thereof, (ii) consent to any such Lessee's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any such Lessee's claim of a total or partial eviction, or (iv) consent to a termination or cancellation of any such Lease, except as specifically provided above or in such Lease. Borrower shall not enter into any oral leases or orally amend or modify any Lease with respect to all or any portion of the Property;

(c) **Collection of Rents.** Borrower shall not collect any of the Rents, issues, income or profits assigned hereunder more than one (1) month in advance of the time when the same shall become due, except for security or similar deposits;

(d) **Further Assignment.** Borrower shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all Rents, except as specifically permitted by the Loan Documents;

(e) **Lease Guaranty.** Borrower shall not alter, modify or change the terms of any guaranty of any Lease over 1,000 square feet, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(f) **Waive Rental Payments.** Borrower shall not waive or excuse the obligation to pay rent under any Lease in excess of 1,000 square feet;

(g) Defending Actions. Borrower shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any Lessee or guarantor thereunder, and shall pay all costs and expenses of the Agent, including court costs and reasonable attorneys' fees, in any such action or proceeding in which the Agent may appear;

(h) Enforcement. Borrower shall enforce the observance and performance in a commercially reasonable manner of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the Lessees and guarantors thereunder;

(i) Notice. Borrower shall immediately notify the Agent of any material breach by a Lessee in excess of 1,000 square feet or guarantor under any Lease;

(j) Subordination. Borrower shall not permit any of the Leases to become subordinate to any lien or liens other than the Ground Lease and liens securing the Obligations secured hereby or liens for general real estate taxes not delinquent; and

(k) Bankruptcy of Lessee. If any Lessee under a Lease in excess of 1,000 square feet is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Borrower covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Agent, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Borrower and Agent. Borrower hereby assigns any such payment to Agent and further covenants and agrees that upon the request of Agent, it will duly endorse to the order of the Agent any such check.

6. Cancellation of Lease. In the event that any Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Agent, and if an Event of Default has occurred, shall be applied, at the election of Agent, to the Obligations in whatever order Agent shall choose in its discretion or shall be held in trust by Agent as further security, without interest, for the payment of the Obligations. Prior to such Event of Default, Borrower may use and apply such termination payments to expenses of the Property.

7. Agent's Rights Upon Lessee Bankruptcy. Upon the occurrence of an Event of Default, and if a Lessee under a Lease in excess of 1,000 square feet files or has filed against it any petition in bankruptcy or for reorganization, or undertakes or is subject to similar action, Agent shall have, and is hereby assigned by Borrower, all of the rights which would otherwise inure to the benefit of Borrower in such proceedings, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of such Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Agent in writing, Agent's exercise of any of the rights provided herein shall preclude Borrower from the pursuit and benefit thereof without any further

action or proceeding of any nature. Agent, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action, or to otherwise pursue creditor's rights therein.

**8. Default of Borrower.**

(a) Remedies. Upon the occurrence of an Event of Default, Borrower's License to collect Rents shall immediately cease and terminate, unless Agent shall otherwise notify Borrower in writing that such License is not being terminated by Agent. Agent shall thereupon be authorized at its option to enter and take possession of all or part of the Property, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Property in the same manner and to the same extent that Borrower might reasonably so act to the fullest extent permitted by applicable law and Borrower hereby warrants any right to assert that any such entry constitutes a trespass. In furtherance thereof, Agent shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases including, but not limited to, Borrower's rights to fix or modify rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Borrower shall also pay to Agent, promptly upon any Event of Default: (a) all rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder together with interest on all security deposits to the extent required to be paid under the Leases or by applicable law; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. Agent will, after payment of all proper costs, charges and any damages, apply the net amount of such Rents to the Obligations. Agent shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

(b) Notice to Lessee. Borrower hereby irrevocably authorizes each Lessee, upon demand and notice from Agent of the occurrence of an Event of Default, to pay all Rents under the Leases to Agent. Borrower agrees that each Lessee shall have the right to rely upon any notice from Agent directing such Lessee to pay all Rents to Agent, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no claim against any Lessee for any Rents paid by Lessee to Agent.

(c) Assignment of Defaulting Borrower's Interest in Lease. Agent shall have the right to assign Borrower's right, title and interest in and to the Leases to any person acquiring title to the Property through foreclosure or otherwise. Such Agent shall not be liable to account to Borrower for the Rents thereafter accruing.

(d) No Waiver. Agent's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Agent's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Agent has under the Loan Agreement, the



Note, the Security Instrument and any of the other Loan Documents or otherwise available at law or in equity. Agent's rights and remedies hereunder may be exercised as often as Agent deems expedient.

(e) Costs and Expenses. The cost and expenses (including any receiver's fees and fees) incurred by Agent pursuant to the powers contained in this Assignment shall be immediately reimbursed by Borrower to Agent on demand, shall be secured hereby and, if not paid by Borrower, shall bear interest from the date demanded at the Default Rate (as defined in the Note). Agent shall not be liable to account to Borrower for any action taken pursuant hereto, other than to account for any Rents actually received by Agent.

9. Indemnification of Agent. Borrower hereby agrees to indemnify, defend, protect and hold Agent harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorney fees) that Agent may or might incur under the Leases or by reason of this Assignment. Such indemnification shall also cover any and all claims and demands that may be asserted against Agent under the Leases or this Assignment, except to the extent caused solely by the gross negligence or willful misconduct of Agent, as determined by a court of competent jurisdiction in a final, non-appealable judgment. Nothing in this section shall be construed to bind Agent to the performance of any Lease provisions, or to otherwise impose any liability upon Agent, including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Security Instrument and shall have been barred thereby of all right, title, interest, and equity of redemption in the Property. This Assignment imposes no liability upon Agent for the operation and maintenance of the Property or for carrying out the terms of any Lease before Agent has entered and taken possession of the Property. Any loss or liability incurred by Agent by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Agent's request, be immediately reimbursed by Borrower. Such reimbursement shall include interest at the Default Rate provided in the Note, costs, expenses and reasonable attorney fees. Agent may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability. The provisions of this Section 9 shall survive repayment of the Obligations and any termination or satisfaction of this Assignment.

10. Additions to, Changes in and Replacement of Obligations. Agent may take security in addition to the security already given Agent for the payment of the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Security Instrument and replacements thereof, which replacements of the Obligations or the Security Instrument may be on the same terms as, or on terms different from, the present terms of the Obligations or the Security Instrument, and may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

11. Power of Attorney. In furtherance of the purposes of this Assignment, Borrower hereby appoints Agent as Borrower's attorney-in-fact, with full authority in the place of Borrower, at the option of Agent at any time after the occurrence of an Event of Default, and in the name of Borrower or Agent, to (a) collect, demand and receive the Rents and other amounts

payable under any Lease, (b) bring suit and take other action to enforce the Leases, (c) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with Lessees in relation to the Leases, (d) give notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease, and (e) take such other action as Agent may reasonably deem necessary or advisable in connection with the exercise of any right or remedy or any other action taken by Agent under this Assignment.

12. **No Mortgagee in Possession; No Other Liability.** The acceptance by Agent of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Property by Agent, be deemed or construed to: (a) constitute Agent as a mortgagee in possession nor place any responsibility upon Agent for the care, control, management or repair of the Property, nor shall it operate to make Agent responsible or liable for any waste committed on the Property by any Lessee, occupant or other party, or for any dangerous or defective condition of the Property, nor thereafter at any time or in any event obligate Agent to appear in or defend any action or proceeding relating to the Leases or to the Property; (b) require Agent to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases; or (c) require Agent to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by Lessees and not assigned and delivered to Agent. Agent shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Property.

13. **Termination of Assignment.** Agent shall terminate and release this Assignment as to all or a portion of the Property to the same extent as the Security Instrument is released in whole or in part.

14. **Miscellaneous.**

(a) **Severability.** If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

(b) **Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

(c) **Counterparts.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

(d) **Notices.** All notices or other written communications hereunder shall be given in the manner set forth in the Loan Agreement.

(e) Modification. No amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Agent's prior written consent.

(f) Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the state in which the Property is located.

(g) Successors and Assigns; Gender; Joint and Several Liability. The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Property, and all subsequent holders of the Note and the Security Instrument, subject in all events to the provisions of the Security Instrument regarding transfers of the Property by Borrower. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one (1) party constituting Borrower, all obligations of each Borrower hereunder shall be joint and several.

(h) Expenses. Borrower shall pay on demand all costs and expenses incurred by Agent in connection with the review of Leases, including reasonable fees and expenses of Agent's outside counsel.

15. **WAIVER OF JURY TRIAL.** BORROWER AND AGENT, BY ITS ACCEPTANCE HEREOF, HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND AGENT ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND AGENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO AGENT TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

16. **JURISDICTION AND VENUE.** BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS ASSIGNMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF ORANGE COUNTY, FLORIDA, OR THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA OR, IF AGENT INITIATES SUCH ACTION, ANY COURT IN WHICH AGENT SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY AGENT IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THE SECURITY INSTRUMENT. BORROWER WAIVES ANY CLAIM THAT ORANGE COUNTY,

FLORIDA OR THE MIDDLE DISTRICT OF FLORIDA IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY AGENT AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY AGENT OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY AGENT OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

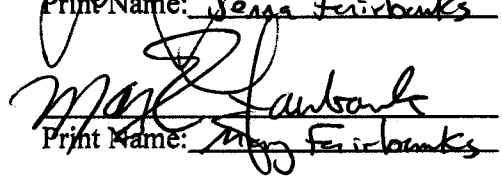
17. **Florida Provisions.** The assignments of Leases and Rents contained in this Assignment are intended to provide Agent with all the rights and remedies of mortgagees pursuant to, and subject to, Section 697.07 of the Florida Statutes (hereinafter "Section 697.07"), as may be amended from time to time. However, in no event will this reference diminish, alter, impair, or affect any other rights and remedies of Agent, including but not limited to, the appointment of a receiver as provided for herein and/or in the Security Instrument, nor will any provision herein, diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth elsewhere in this Assignment or in the Security Instrument. In addition, this assignment will be fully operative without regard to the value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Borrowers to Agent and Lenders, and will be in addition to any rights arising under Section 697.07, provided the provisions of this Assignment do not violate the provisions of Section 697.07. Further, except for the notices required hereunder, if any, Borrower waives, except as may be prohibited by law, any notice of default or demand for turnover of Rents by Agent, together with any rights under Section 697.07 to apply to a court to deposit the Rents into the registry of the court or such other depository as the court may designate.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, Borrower has caused this Assignment to be duly executed as of the day and year first above written.

**Witnesses:**

  
Print Name: Steven J. Fairbanks

  
Print Name: Steven J. Fairbanks

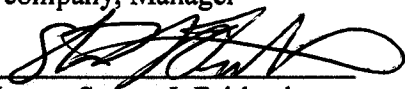
**BORROWER:**

**PEGASUS HOTEL LLC**, a Delaware limited liability company

By: Pegasus Hotel Venture LLC, a Delaware limited liability company, Manager

By: PHM University 2018 Hotel Investor LLC, a Florida limited liability company, Manager

By: PHM University 2018 Hotel Manager LLC, a Florida limited liability company, Manager

By:   
Name: Steven J. Fairbanks  
Title: Manager

STATE OF Maryland )  
 ) SS.  
 COUNTY OF Montgomery )

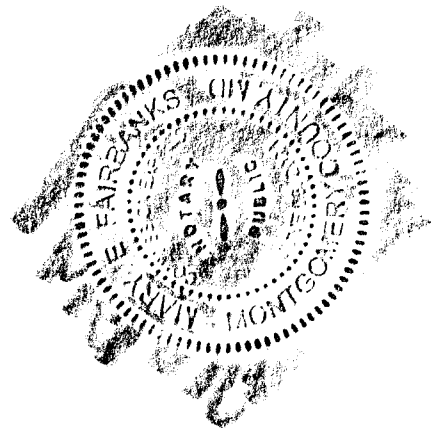
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Steven J. Fairbanks, the Manager of PHM University 2018 Hotel Manager LLC, a Florida limited liability company, the Manager of PHM University 2018 Hotel Investor LLC, a Florida limited liability company, the Manager of Pegasus Hotel Venture LLC, a Delaware limited liability company, the Manager of PEGASUS HOTEL LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21<sup>th</sup> day of August, 2018.

Mary E. Fairbanks  
 Notary Public

My Commission Expires:

My Commission Expires  
 June 06, 2021



**EXHIBIT A****LEGAL DESCRIPTION OF THE PROPERTY**

The land referred to herein below is situated in the County of Orange, State of Florida, and is described as follows:

A portion of Section 3, Township 22 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at the South Quarter Corner of Section 3, Township 22 South, Range 31 East, Orange County, Florida; thence South 89°30'24" West, a distance of 1195.08 feet along the South line of the Southwest Quarter of said Section 3 to a point on the Easterly Right of Way of State Road 434 per Florida Department of Transportation Right of Way Map Section 75037-2501; thence the following four (4) courses and distances along said Easterly Right of Way: North 14°50'32" West, a distance of 65.92 feet; thence North 59°24'26" West, a distance of 60.17 feet to a point on a non-tangent curve concave Westerly, having a radius of 11394.16 feet, a central angle of 00°10'34" and a chord bearing of North 01°18'40" East; thence from a tangent bearing North 01°23'57" East, Northerly 35.02 feet along the arc of said curve to the point of tangency thereof; thence North 01°13'23" East, a distance of 79.61 feet; thence departing said Right of Way South 89°59'13" East, a distance of 23.99 feet to the POINT OF BEGINNING; thence North 01°12'54" East, a distance of 54.20 feet; thence North 01°04'23" West, a distance of 199.25 feet; thence North 01°02'40" East, a distance of 122.77 feet; thence North 00°09'44" East, a distance of 375.75 feet; thence North 00°37'14" East, a distance of 270.62 feet; thence South 88°42'25" East, a distance of 287.70 feet; thence South 28°12'37" West, a distance of 128.74 feet; thence South 11°25'55" West, a distance of 126.73 feet to a point on a non-tangent curve concave Easterly, having a radius of 469.77 feet, a central angle of 09°40'15" and a chord bearing of South 06°04'46" West; thence from a tangent bearing South 10°54'54" West, Southerly 79.29 feet along the arc of said curve; thence South 01°14'30" West, a distance of 92.77 feet to a point on a non-tangent curve concave Easterly, having a radius of 468.33 feet, a central angle of 08°01'18" and a chord bearing of South 02°46'10" East; thence from a tangent bearing South 01°14'29" West, Southerly 65.57 feet along the arc of said curve; thence South 29°58'36" East, a distance of 372.45 feet; thence South 44°25'26" West, a distance of 166.65 feet; thence North 87°43'34" West, a distance of 6.70 feet; thence South 44°25'26" West, a distance of 140.10 feet; thence North 89°59'13" West, a distance of 162.75 feet to the POINT OF BEGINNING.

TOGETHER WITH those easements granted for the benefit of the insured property as set forth in the unrecorded Sublease Agreement as evidenced by the Memorandum of Sublease between THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES and PEGASUS HOTEL LLC recorded on August 30, 2018 as Document No. 2018051877 of the Public Records of Orange County, Florida.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

DOCM 20180518803

08/30/2018 03:43:04 PM Page 1 of 7

Rec Fee: \$61.00

Phil Diamond, Comptroller

Orange County, FL

PU - Ret To: LOWNDES DROSDICK ET AL



A. NAME &amp; PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

DLA Piper LLP

Attn: Maria Principe

444 West Lake Street, Suite 900

Chicago, IL 60606

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>Pegasus Hotel LLC</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS <b>350 Fifth Avenue, Suite 5340</b>		CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10118</b>
			COUNTRY <b>USA</b>	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
			COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>Fifth Third Bank, an Ohio banking corporation, as Agent</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS <b>222 South Riverside Plaza</b>		CITY <b>Chicago</b>	STATE <b>IL</b>	POSTAL CODE <b>60606</b>
			COUNTRY <b>USA</b>	

4. COLLATERAL: This financing statement covers the following collateral:

See Exhibit A attached hereto and made a part hereof for a legal description of the property covered by this financing statement.

See Exhibit B attached hereto and made a part hereof for a description of the collateral covered by this financing statement.

6 pages attached, which includes one Addendum page.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative6a. Check only if applicable and check only one box:☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility6b. Check only if applicable and check only one box:☐ Agricultural Lien ☐ Non-UCC Filing7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

**File with Recorder of Orange County, Florida**



**UCC FINANCING STATEMENT ADDENDUM**

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

**Pegasus Hotel LLC**

OR 9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR 10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR 11b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut☐ covers as-extracted collateral☒ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

**See Exhibit A attached hereto and made a part hereof for a legal description of the property covered by this financing statement.**

17. MISCELLANEOUS:

**EXHIBIT A**

A portion of Section 3, Township 22 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at the South Quarter Corner of Section 3, Township 22 South, Range 31 East, Orange County, Florida; thence South 89°30'24" West, a distance of 1195.08 feet along the South line of the Southwest Quarter of said Section 3 to a point on the Easterly Right of Way of State Road 434 per Florida Department of Transportation Right of Way Map section 75037-2501; thence the following Four (4) courses and distances along said Easterly Right of Way: North 14°50'32" West, a distance of 65.92 feet; thence North 59°24'26" West, a distance of 60.17 feet to a point on a non-tangent curve concave Westerly, having a radius of 11394.16 feet, a central angle of 00°10'34" and a chord bearing of North 01°18'40" East; thence from a tangent bearing North 01°23'57" East, Northerly 35.02 feet along the arc of said curve to the point of tangency thereof; thence North 01°13'23" East, a distance of 79.61 feet; thence departing said Right of Way South 89°59'13" East, a distance of 23.99 feet to the POINT OF BEGINNING; thence North 01°12'54" East, a distance of 54.20 feet; thence North 01°04'23" West, a distance of 199.25 feet; thence North 01°02'40" East, a distance of 122.77 feet; thence North 00°09'44" East, a distance of 375.75 feet; thence North 00°37'14" East, a distance of 270.62 feet; thence South 88°42'25" East, a distance of 287.70 feet; thence South 28°12'37" West, a distance of 128.74 feet; thence South 11°25'55" West, a distance of 126.73 feet to a point on a non-tangent curve concave Easterly, having a radius of 469.77 feet, a central angle of 09°40'15" and a chord bearing of South 06°04'46" West; thence from a tangent bearing South 10°54'54" West, Southerly 79.29 feet along the arc of said curve; thence South 01°14'30" West, a distance of 92.77 feet to a point on a non-tangent curve concave Easterly, having a radius of 468.33 feet, a central angle of 08°01'18" and a chord bearing of South 02°46'10" East; thence from a tangent bearing South 01°14'29" West, Southerly 65.57 feet along the arc of said curve; thence South 29°58'36" East, a distance of 372.45 feet; thence South 44°25'26" West, a distance of 166.65 feet; thence North 87°43'34" West, a distance of 6.70 feet; thence South 44°25'26" West, a distance of 140.10 feet; thence North 89°59'13" West, a distance of 162.75 feet to the POINT OF BEGINNING.

TOGETHER WITH those easements granted for the benefit of the insured property as set forth in the unrecorded Sublease Agreement as evidenced by the Memorandum of Sublease between THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES and PEGASUS HOTEL LLC recorded on August 30, 2018 as Document No. 2018 251799 of the Public Records of Orange County, Florida.

**EXHIBIT B**

The Debtor does hereby GRANT, SELL, CONVEY, MORTGAGE, WARRANT and ASSIGN unto the Secured Party, its successors and assigns, and does hereby grant to Secured Party, its successors and assigns, a security interest in, all of Debtor's right, title and interest in and to all of its assets, wherever and howsoever located, and all of Debtor's right, title and interest in and to all products and proceeds thereof, including, without limitation, all of Debtor's right, title and interest in all and singular the properties, rights, interests and privileges described below, all of same being collectively referred to herein as the "Mortgaged Property":

THE LEASEHOLD ESTATE created by that certain Sublease Agreement between the University of Central Florida Board of Trustees, as Landlord and Debtor, as Tenant effectively dated June 22, 2016, as amended by a First Amendment to Sublease Agreement dated June 20, 2018, and as evidenced by that certain Memorandum of Sublease executed by the University of Central Florida Board of Trustees, as Landlord, and Debtor, as Tenant, dated AUGUST 29, 2018 and recorded AUGUST 30, 2018 as Document No. 2018 0518799 of the Public Records of Orange County, Florida (the "Leasehold Estate"), together with THE LAND located in Orange County, Florida which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Debtor now or hereafter acquired in and to any of the foregoing, including without limitation those certain improvements to be constructed on the Land in accordance with the Loan Agreement (collectively, the "Improvements");

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Debtor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Debtor and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs,

bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring, beds, bureaus, chiffoniers, chests, chairs, desks, mirrors, tables, 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, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, facsimile machines, medical equipment, potted plants, lighting fixtures, fire prevention and extinguishing apparatus, fittings, plants, laundry machines, tools, machinery, engines, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, lockers, spotlighting equipment, garbage disposals, and other customary hotel equipment and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Debtor and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Security Instrument.

TOGETHER WITH the following (the "Personal Property"):

All personal property of every nature whatsoever now or hereafter owned by Debtor or used by Debtor in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Debtor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Debtor or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Florida (as amended from time to time, the "Code");

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or the Improvements or proceeds of any sale, option or contract to sell the Land or the Improvements or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

All of Debtor's books and records pertaining to the foregoing;

TOGETHER WITH all right, title and interest which the Debtor hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities and parking charges, the rendering of services by Debtor or any operator or manager of a 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 any other items of revenue, receipts and/or income as identified in the Uniform System of Accounts for the Lodging Industry, 11th Edition, published by the American Hotel and Lodging Association in conjunction with the HFTP, as from time to time amended, and all right, title and interest which the Debtor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Debtor any statutory rights;

TOGETHER WITH any and all Awards and Insurance Proceeds (as defined in the Loan Agreement), the Debtor hereby authorizes, directs and empowers the Secured Party to adjust, compromise, claim, collect, receive and apply such Awards and Insurance Proceeds in accordance with the terms and conditions set forth in the Loan Agreement; and the Debtor agrees to execute and deliver from time to time such further instruments as may be requested by the Secured Party to confirm such assignment to the Secured Party of any such Awards and Insurance Proceeds;

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Debtor now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Debtor or by anyone on behalf of the Debtor to the Secured Party;

All plans, specifications, surveys, architectural renderings and drawings, soil test reports, other reports or examinations of the Mortgaged Property, architectural contracts, engineering contracts, construction contracts, subcontracts and contracts with material suppliers;

All service contracts, maintenance contracts, management agreements, warranties, guaranties and the right to use all names now or hereafter used by Debtors in connection with the Mortgaged Property;

All permits, certificates, licenses, approvals, contracts, agreements, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition,

construction, development, operation, use and occupancy of the Mortgaged Property, including without limitation, certificates of occupancy;

All declarations of covenants or restrictions, regulatory agreements, redevelopment agreements, condominium declarations, homeowners' declarations or other documents including, without limitation, any articles of incorporation or bylaws of any association or corporation formed pursuant to a condominium or homeowners' declaration now or hereafter regulating or affecting the use of any portion of the Mortgaged Property (collectively, the "Property Regulation Documents");

All soil borings and architectural, engineering, subdivision, access and other tests, studies or reports made or to be made with respect to the Mortgaged Property;

All market analyses, appraisals and development and economic feasibility studies made or to be made with respect to the Mortgaged Property.

All environmental reports, studies and letters related to the Mortgaged Property heretofore or hereafter received or obtained by or on behalf of Debtors; and

All claims, demands, judgments, insurance proceeds, rights of action, awards or damages, compensation and settlements resulting from the taking of all or any part of the Mortgaged Property under the power of eminent domain or for any damage (whether caused by such taking or casualty or otherwise) to all or any part of the Mortgaged Property;

which Debtors have, may have, or may subsequently directly or indirectly enter into, obtain or acquire in connection with the acquisition, improvement, ownership, operation, leasing or maintenance of the Mortgaged Property, together with the proceeds of all of the foregoing.

All Management Agreements, Architect's Contracts; General Contracts; Construction Contracts; all other contracts respecting the Mortgaged Property or any portion thereof; and all Project Agreements.

PREPARED BY AND RETURN TO:

Michael R. Gibbons, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
450 South Orange Avenue, Suite 800  
Post Office Box 2809  
Orlando, Florida 32802-2809  
(407) 843-4600

DOCH 20180518804  
08/30/2018 03:43:04 PM Page 1 of 6  
Rec Fee: \$52.50  
Phil Diamond, Comptroller  
Orange County, FL  
PU - Ret To: LOWNDES DROSDICK ET AL



Permit No.: \_\_\_\_\_ Tax Folio No: 03-22-31-0000-00005

**NOTICE OF COMMENCEMENT**

STATE OF FLORIDA  
COUNTY OF ORANGE

The undersigned hereby gives notice improvements will be made to certain real property, and in accordance with Chapter 713.13, Florida Statutes, the following information is provided in this Notice of Commencement:

1. Legal Description of the property:  
See attached Exhibit A.
2. General description of improvements: Construction of a 122,828 gross square foot hotel and related facilities and infrastructure improvements.
3. Owner information
  - a. Name and address: Pegasus Hotel LLC  
4767 New Broad Street  
Orlando, Florida 32814
  - b. Interest in property:
  - c. Name and address of fee simple titleholder (if other than Owner):
4.
  - a. Contractor: Batson Cook Company  
1101 Channelside Drive, Suite 401  
Tampa, Florida 33602
  - b. Contractor's phone number: 813.221.7575
5. Surety
  - a. Name and address: N/A
  - b. Phone number:
  - c. Amount of Bond: \$
6.
  - a. Lender: Fifth Third Bank  
222 South Riverside Plaza  
Chicago, Illinois 60606
  - b. Lender's phone number: (312) 704-5549
7.
  - a. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served, as provided by Section 713.13(1)(a)7, Florida Statutes: [name and address]

b. Phone numbers of designated persons:

8. a. In addition to himself or herself, Owner designates \_\_\_\_\_ of \_\_\_\_\_ to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:

b. Phone number of person or entity designated by Owner:

9. Expiration date of Notice of Commencement: March 31, 2020.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

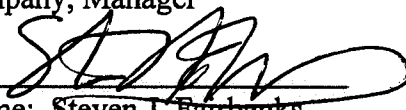
Signature of Owner or Owner's Authorized Officer/Director/  
Partner/Manager

**PEGASUS HOTEL LLC**, a Delaware limited  
liability company

By: Pegasus Hotel Venture LLC, a Delaware  
limited liability company, Manager

By: PHM University 2018 Hotel Investor  
LLC, a Florida limited liability  
company, Manager

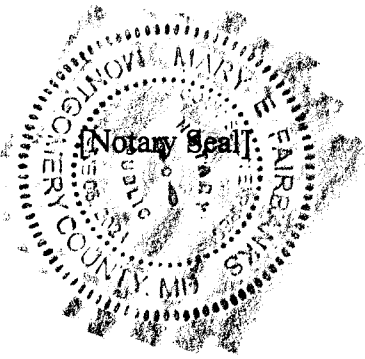
By: PHM University 2018 Hotel Manager  
LLC, a Florida limited liability  
company, Manager

By:   
Name: Steven J. Fairbanks  
Title: Manager



STATE OF Maryland )  
COUNTY OF Montgomery ) SS:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August, 2018 by Steven J. Fairbanks, as Manager of PHM University 2018 Hotel Manager LLC, a Florida limited liability company, as Manager of PHM University 2018 Hotel Investor LLC, a Florida limited liability company, as Manager of Pegasus Hotel Venture LLC, a Delaware limited liability company, as Manager of Pegasus Hotel LLC, a Delaware limited liability company, on behalf of the limited liability company, who is personally known to me or produced \_\_\_\_\_ as identification.



Mary E Fairbanks  
Print Name: Mary E Fairbanks  
Notary Public, State of Maryland  
Commission No.: My Commission Expires 6/6/2021  
My commission expires.

**Exhibit "A"**  
**Legal Description**

**THE PROPERTY**

A portion of Section 3, Township 22 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at the South Quarter Corner of Section 3, Township 22 South, Range 31 East, Orange County, Florida; thence South 89°30'24" West, a distance of 1195.08 feet along the South line of the Southwest Quarter of said Section 3 to a point on the Easterly Right of Way of State Road 434 per Florida Department of Transportation Right of Way Map Section 75037-2501; thence the following four (4) courses and distances along said Easterly Right of Way: North 14°50'32" West, a distance of 65.92 feet; thence North 59°24'26" West, a distance of 60.17 feet to a point on a non-tangent curve concave Westerly, having a radius of 11394.16 feet, a central angle of 00°10'34" and a chord bearing of North 01°18'40" East; thence from a tangent bearing North 01°23'57" East, Northerly 35.02 feet along the arc of said curve to the point of tangency thereof; thence North 01°13'23" East, a distance of 79.61 feet; thence departing said Right of Way South 89°59'13" East, a distance of 23.99 feet to the POINT OF BEGINNING; thence North 01°12'54" East, a distance of 54.20 feet; thence North 01°04'23" West, a distance of 199.25 feet; thence North 01°02'40" East, a distance of 122.77 feet; thence North 00°09'44" East, a distance of 375.75 feet; thence North 00°37'14" East, a distance of 270.62 feet; thence South 88°42'25" East, a distance of 287.70 feet; thence South 28°12'37" West, a distance of 128.74 feet; thence South 11°25'55" West, a distance of 126.73 feet to a point on a non-tangent curve concave Easterly, having a radius of 469.77 feet, a central angle of 09°40'15" and a chord bearing of South 06°04'46" West; thence from a tangent bearing South 10°54'54" West, Southerly 79.29 feet along the arc of said curve; thence South 01°14'30" West, a distance of 92.77 feet to a point on a non-tangent curve concave Easterly, having a radius of 468.33 feet, a central angle of 08°01'18" and a chord bearing of South 02°46'10" East; thence from a tangent bearing South 01°14'29" West, Southerly 65.57 feet along the arc of said curve; thence South 29°58'36" East, a distance of 372.45 feet; thence South 44°25'26" West, a distance of 166.65 feet; thence North 87°43'34" West, a distance of 6.70 feet; thence South 44°25'26" West, a distance of 140.10 feet; thence North 89°59'13" West, a distance of 162.75 feet to the POINT OF BEGINNING. Containing 5.92 acres, more or less.

**TOGETHER WITH** the following easements and rights of use (the "Easements") which are hereby granted by Landlord to Tenant for the purposes described as follows:

1. **Access.** A non-exclusive easement for right of way, ingress and egress purposes over, under and across Gemini Boulevard and University Boulevard and across those areas owned by Landlord lying between the Property and the adjacent Gemini Boulevard and Alafaya Trail at approximately the Access points shown on the attached Exhibit A-1, as well all streets, drives, paths and walkways now or hereafter serving the Property and lying outside the boundaries of the Property as such may exist from time to time. Landlord agrees to maintain in good condition and repair Gemini Boulevard and University Boulevard. Tenant shall have the right to construct and shall thereafter maintain in good condition and repair, the drives, paths and walkways which connect the Property to Gemini Boulevard, University Boulevard and the nearby Alafaya Trail. At no time will Landlord block such access other than on a temporary basis in the case of an emergency or as needed for repair (and then at all times providing a reasonable alternative ingress egress access to and from the Property to Gemini Boulevard, University Boulevard and Alafaya Trail for vehicles and pedestrians). This Easement shall

continue for so long as the Sublease (as modified, amended, extended or replaced) shall continue in full force and effect.

2. **Utilities and Drainage.** A non-exclusive easement for the construction and installation of lines and appurtenant facilities for all utilities, communication services and stormwater drainage service to the Property. The construction, installation and connection of such lines and facilities shall be undertaken by Tenant at Tenant's sole cost and expense, in accordance with plans and specifications submitted to and approved by Landlord, which approval will not be unreasonably withheld or delayed. The utility and stormwater drainage facilities located off the Property shall be conveyed by the Tenant to the Landlord upon completion and approval by the Landlord, and upon transfer thereof by Bill of Sale the Landlord shall assume responsibility for the maintenance, repair and replacement of such transferred lines and facilities, and in any event shall keep all lines and facilities of Landlord to which the Tenant connects in good condition and repair at Landlord's cost and expense. Any lines constructed by Tenant which are not transferred to Landlord shall be kept in good condition and repair by Tenant at Tenant's sole cost and expense. This Easement shall continue for so long as the Sublease (as modified, amended, extended or replaced) shall continue in full force and effect.

3. **Landscaping.** An easement for landscape (including any Landlord-approved hardscape) installation, maintenance, repair and replacement in those areas adjacent to the Property and lying between the Property and nearby rights of way as shown on the attached **Exhibit A-1**. Tenant shall maintain, repair and replace all landscape improvements installed by Tenant from time to time. This Easement shall continue for so long as the Sublease (as modified, amended, extended or replaced) shall continue in full force and effect.

4. **Staging.** A temporary easement for staging, equipment and materials storage, construction trailer and parking over and across that portion of Landlord's property lying contiguous to and northerly of the Property, bounded on the East by Gemini Boulevard, on the North by Centaurus Boulevard, and on the West by Alafaya Trail (the "**Staging Area**"). This Easement shall continue for so long as the construction by Tenant of the Hotel/Conference Center is continuing until sixty (60) days after the construction of the Hotel/Conference Center is fully complete, at which time this Easement shall terminate. Within said sixty(60) day period, Tenant shall cause to be removed all trailers, equipment and improvements to the Staging Area, and restore the Staging Area substantially to the condition it existed prior to the Tenant's use of the Staging Area.

5. **Signage.** An exclusive easement for signage over, under and across those portions of Landlord's property located approximately as shown on the attached **Exhibit A-1**, with the right to construct, install, maintain, repair and replace thereon a sign advertising the Hotel/Conference Center and the services provided by the Hotel/Conference Center, and related signage improvements (lighting, landscaping, etc. ), the design of which shall be subject to Landlord's approval which will not be unreasonably withheld or delayed

6. **Location; Recordable Easement(s).** The parties agree that the exact location of the easement areas encumbered by the foregoing easements shall be on such portions of the Landlord's adjacent University property as may be improved with streets, drives, paths, and walkways; with utility, communication and stormwater drainage lines and facilities; with landscaping and signage; that from time to time serve and benefit the Hotel/Conference Center Property and operation. Attached is an **Exhibit A-1** showing the location of some, but not all of the easements that will be required for development of the Hotel/Conference Center. Other easement locations will be determined upon finalizing approved utility, drainage and other plans and the locations of the easements on the attached Exhibit A-1 may change as plans are reviewed and modified through the plan approval process. If either party requests from the other an easement in recordable form that specifically locates by legal description the precise location of any easement area and reflects the easement

terms set forth in this Exhibit A as to the specifics of that easement, the parties agree to execute and deliver each to the other, and record, such reasonable forms of easement as may be requested by the requesting party, subject to such edits and changes thereto as may be reasonably be requested by the other party.

**EXHIBIT A-1  
KNOWN EASEMENT LOCATIONS**

