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2016096166

This Instrument Prepared By:  
 Miller & Martin PLLC  
 1180 West Peachtree Street, NW  
 Suite 2100  
 Atlanta, Georgia 30309

Chicago Title  
 L20164239 NS

Grantor-Assignor  
 Grantee-Assignee

### ASSIGNMENT OF LEASES AND RENTS

**THIS ASSIGNMENT OF LEASES AND RENTS** (this "Assignment"), is made and executed as of the 9<sup>th</sup> day of November, 2016, by **LUCKY OMAHA HOSPISTALITY LLC**, a Nebraska limited liability company, whose mailing address is 330 N. 30<sup>th</sup> Street, Omaha, NE 68131 ("Assignor") to, in favor of and for the benefit of **ACCESS POINT FINANCIAL, INC.**, a Delaware corporation, whose mailing address is One Ravinia Drive, Suite 900, Atlanta, Georgia 30346 Attn: Dilip Petigara ("Lender"),

### WITNESSETH:

**WHEREAS**, Lender has made a loan to Assignor (the "Loan") which is evidenced by that certain Promissory Note executed by the Assignor to and in favor of Lender in the principal amount of THREE MILLION SEVEN HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS (\$3,720,000.00) (the "Note").

**WHEREAS**, the Note is secured by (i) a Deed of Trust and Security Agreement executed by Assignor and in favor of Lender (the "Security Instrument") granting to Lender, among other things, a first priority lien and encumbrance upon the Property (as defined in the Security Instrument) and Improvements (as defined in the Security Instrument) legally described in Exhibit A attached to this Assignment (the "Premises"); and (ii) certain other Loan Documents (as defined in the Security Instrument), also executed by the Assignor and Assignor to and in favor of Lender of even date herewith, the terms and provisions of which Security Instrument

and other Loan Documents are by this reference thereto incorporated herein and made a part hereof.

**WHEREAS**, as a material inducement to Lender to make the Loan and as further security for the Loan, Assignor makes this Assignment.

**NOW, THEREFORE**, for \$10.00 and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:

**1. Assignment of Leases and Rents.**

**1.1 Definitions.** Capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed to such terms in the Note, the Security Instrument and other Loan Documents.

**1.2 Assignment.** Subject to the terms and conditions of this Assignment, Assignor hereby absolutely, unconditionally and irrevocably transfers, conveys, assigns and grants to Lender all of Assignor's right, title and interest in and to all current and future leases and other agreements affecting the use, enjoyment, or occupancy of all or any part of the Real Estate and all improvements located on the Premises, together with any extensions or renewals of the same, this Assignment of current and future leases and current and future agreements being effective without further or supplemental assignment;

The leases and other agreements described above, as same may be modified or amended, and any extension or renewal of the same are hereinafter collectively referred to as the "**Leases**";

Together with all deposits, rents, rent equivalents, income, receivables, issues, revenues, receipts, insurance proceeds and profits arising from the Leases and renewals thereof and together with all rents, rent equivalents, income, fees, receivables, issues, accounts, profits (including, but not limited to, all oil and gas or other mineral royalties and bonuses), charges for services rendered and any and all payment and consideration of whatever form or nature received by Assignor or its agents or employees from any and all sources relating to the use, enjoyment and occupancy of the Premises including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars (including, without limitation, service charges for employees and staff), mini-bars, meeting rooms, banquet rooms, apartments, parking and recreational facilities, health club membership fees, food and beverage wholesale and retail sales, service charges, convention services, special events, audio-visual services, boat cruises, travel agency fees, telephone charges, laundry services, vending machines and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of possession, use and occupancy of all or any portion of the Premises or personalty located thereon, or rendering of services by Assignor or, to the extent of Assignor's interest therein, any operator or manager of the hotel or the commercial space located in the Premises 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, and charges for services such as room service, telecommunication and video, electronic mail, internet connection and other communication and entertainment

services), license, lease, sublease and concession fees and rentals, proceeds, if any, from rental or business interruption or other loss of income insurance and any other items of revenue which would be included in operating revenues under the uniform system in accordance with generally accepted accounting principals (all of the foregoing hereinafter collectively referred to as the "**Rents**"). Notwithstanding the foregoing, any Rents in connection with the sale of alcohol or alcoholic beverages shall be assigned by Assignor pursuant to this Assignment only to the extent permitted by applicable law.

**1.3 Absolute Assignments.** The foregoing assignments of Leases and Rents are present and absolute assignments and not assignments for or as security only. Lender's right to the Leases and Rents is not contingent upon its possession of the Premises.

**1.4 License.** Lender hereby grants to and confers upon Assignor a revocable license to collect and retain the Rents as the same become due and payable under the Leases, but not in excess of thirty (30) days in advance, so long as, and only so long as, no Event of Default (as herein defined) exists under this Assignment, the Note, the Security Instrument or any of the other Loan Documents (the "License"). Upon the occurrence of an Event of Default under this Assignment, the Note, the Security Instrument or any of the other Loan Documents, the License granted and conferred herein shall immediately and automatically be revoked, cease and terminate without notice.

Upon any such revocation and termination of the License, Lender shall have the right to notify any and all parties to the Leases to pay the Rents then due and thereafter coming due directly to Lender. After such revocation and termination of the License, any and all Rents received by the Assignor shall be remitted to Lender not later than three (3) business days following Assignor's receipt of the same.

Assignor hereby authorizes and directs any party to the Leases, upon receipt of written notice from Lender stating that an Event of Default has occurred or exists under the Note, the Security Instrument or any of the other Loan Documents, to pay directly to Lender the Rents then due and thereafter coming due under the Leases. Assignor agrees that any party shall have the right to rely upon any such notice from Lender without any obligation, and without any right, to inquire as to whether any such Event of Default has actually occurred or exists and notwithstanding any claim of Assignor to the contrary. Assignor shall have no claim (and hereby waives any claim) against any party for the Rents paid by such party directly to Lender following its receipt of any such notice from Lender.

### **1.5 Covenants.**

**1.5.1 Negative Covenants.** As to the Leases, Assignor hereby covenants and agrees that except for in the ordinary course of business in the operation of a hotel of like kind, size and geographic vicinity, Assignor shall not, without the prior written consent of Lender, (i) alter, modify, cancel, terminate, discharge or compromise the Leases or the Rents due or to become due thereunder or change the terms of any guarantees of any of the Leases ("Guarantees"); (ii) accept any Rents for more than one installment in advance; (iii) waive, release, reduce, discount or otherwise discharge or compromise any Rents; (iv) waive, release,

reduce, discount or otherwise discharge or compromise any Guarantees; or (v) execute any other assignment of the Leases or the Rents, whether absolute or conditional.

**1.5.2 Affirmative Covenants.** As to the Leases, Assignor shall: (i) promptly notify Lender in writing of any default or any attempted termination, relocation, or buyout, or any notice of the same given by either the Assignor or any tenant; (ii) perform all of its covenants, agreements and obligation as landlord under the Leases, (iii) not suffer or permit to occur any release of liability of any tenant or guarantor or accrual of any right in any tenant or guarantor to withhold payment of Rents; and (iv) enforce the terms of the Leases and all remedies available to the Assignor as landlord under the Leases against the tenants in any case of any material default by any tenant under the Leases.

## **2. Default and Remedies.**

### **2.1 Default.**

(a) It shall constitute an event of default ("Event of Default") of and under this Assignment and, at the option of Lender, under the other Loan Documents, if Assignor shall fail to perform or observe any of the covenants, agreements or conditions of this Assignment and any such failure shall remain unremedied for thirty (30) days after notice to Assignor of the occurrence of such failure.

(b) It shall constitute an Event of Default of and under this Assignment if there shall occur under the Note, Security Instrument and other Loan Documents an Event of Default as defined in those Loan Documents.

### **2.2 Remedies.**

(a) Upon the occurrence of an Event of Default, the License shall automatically be revoked, cease and terminate without notice to the Assignor and without regard to the adequacy or inadequacy of Lender's security under this Assignment, the Security Instrument or the other Loan Documents. Thereupon, Lender shall be entitled to exercise any and all rights and remedies provided in this Assignment, the Security Instrument and the other Loan Documents. The application of any Rents collected by Lender shall be in accordance with the terms of the Security Instrument.

(b) The rights and remedies provided in this Assignment shall not be deemed exclusive of any rights or remedies granted to Lender in the Security Instrument or by law, but shall be deemed special and additional rights and remedies and shall be cumulative with those rights and remedies granted in the Security Instrument or by law.

## **3. Miscellaneous.**

**3.1 Perfection.** This Assignment shall be perfected upon its recordation in the official public records of Douglas County, Nebraska. Neither possession of the Rents nor the appointment of a Receiver of the Premises shall be required for such perfection.

**3.2 Assignment.** Lender may assign its rights in and under this Assignment to any subsequent holder of the Note and Security Instrument and to any person acquiring title to the Premises through foreclosure of the Security Instrument or otherwise.

**3.3 Obligations.** Lender shall not be obligated to perform or discharge, nor, by its acceptance of this Assignment, does it undertake to perform or discharge, any obligation, duty or liability of Assignor, under the Leases, or otherwise. Nothing herein contained shall be construed as causing Lender to be a "Mortgagee in Possession" and Lender shall have no liability of a Mortgagee in Possession by exercising its rights under this Assignment, all such liability being expressly waived and released by Assignor.

**3.4 Ownership.** Assignor represents and warrants that it is the absolute owner of the Rents and Leases with full right, power and authority to execute and deliver this Assignment. Each of the Leases is legally valid, binding upon and enforceable against the parties named therein and has not been changed or modified except as stated on Exhibit B. There is no outstanding assignment or pledge of the Rents or Leases or any one thereof, nor are there any existing defaults under the Leases or any one thereof. No party to any Lease has any defenses, set offs or counterclaims against Assignor.

**3.5 Notices.** Any Notice required to be given hereunder shall be given in the manner specified in the Security Instrument.

**3.6 Conflict.** In the event of a conflict between the provisions of this Assignment and any other Loan Documents, this Assignment shall control.

**3.7 Cooperation.** Assignor agrees to cooperate with any reasonable request of Lender to implement the provisions of this Assignment.

**3.8 Successors and Assigns.** Whenever the word "Assignor" is used herein, it is agreed and understood that the same includes and shall be binding upon the Assignor's successors and assigns and any party holding title to the Premises by, through or under the Assignor. All of the rights, powers, privileges and immunities herein granted and assigned to Lender shall also inure to its successors and assigns, including all holders of the Note and Security Instrument.

**3.9 Waiver of Trial by Jury.** Assignor hereby waives, to the fullest extent permitted by Applicable Law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating, directly or indirectly to this Assignment or any acts or omissions of the Assignor in connection therewith or contemplated thereby.

**3.10 GOVERNING LAW.** THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF GEORGIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY


INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE INDIVIDUAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF GEORGIA SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS.

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IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal to be effective as of the 9<sup>th</sup> day of November 2016.

**ASSIGNOR:**

LUCKY OMAHA HOSPITALITY LLC, a  
Nebraska limited liability company

By:  (Seal)  
Name: Deepak Shah  
Title: Member.

STATE OF IL

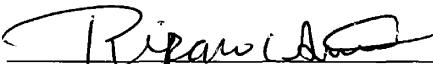
COUNTY OF COOK

I, RIPAN C. SHETH, a Notary Public, certify that Deepak Shah personally came before me this day and acknowledged that he is the Managing member of Lucky Omaha Hospitality LLC, a Nebraska limited liability company, and that he as the Managing member, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal, this the 9<sup>th</sup> day of November, 2016.

(Official Seal)



  
Signature of Notary

RIPAN C. SHETH, Notary Public  
Printed or typed name

## Exhibit "A"

All of Lots Ten (10), Eleven (11), Twelve (12) and Thirteen (13), in Block Eight (8), in Hillside Addition No. 1, an addition to the City of Omaha, in Douglas County, Nebraska, together with part of Lots Three (3) and Four (4), and the North Half (N½) of the vacated alley adjacent thereto on the South, together with all of Lots Five (5), Six (6) and Seven (7), and the North Half (N½) of the vacated alley adjacent thereto on the South, and all of Lots Fourteen (14) and Fifteen (15), and the South Half (S½) of the vacated alley adjacent thereto on the North, in Block Seven (7), in said Hillside Addition No. 1, together with parts of Lots Eight (8), Ten (10), Eleven (11), Twelve (12) and Thirteen (13), and part of the vacated alley adjacent thereto on the North, in Block Seven (7), in said Hillside Addition No. 1, together with vacated Chicago Street, all more particularly described as follows:

Commencing at the Northwest corner of Lot Three (3), said Block Seven (7); thence Southerly, on the West line of said Lot Three (3), 40.00 feet, to the point of beginning; thence Southerly, on the West line of said Lot Three (3) and its Southerly extension, 86.00 feet, to the centerline of said vacated alley; thence Westerly, on the centerline of said vacated alley, 54.00 feet, to the Northerly extension of the West line of Lot Fifteen (15), said Block Seven (7); thence Southerly, on the West line of said Lot Fifteen (15) and its Northerly extension, 126.00 feet, to the Southwest corner of said Lot Fifteen (15); thence Easterly, on the South line of Lots Fourteen (14) and Fifteen (15), said Block Seven (7), 104.00 feet, to the Southeast corner of said Lot Fourteen (14); thence Northerly, on the East line of said Lot Fourteen (14), 16.00 feet; thence Northeasterly, 219.02 feet, more or less, to a point on the West line of Lot Nine (9), said Block Seven (7), said point being 14.73 feet South of the Northwest corner of said Lot Nine (9); thence Northerly, on the West line of said Lot Nine (9) and on its Northerly extension, 20.73 feet, more or less, to a point on the centerline of said vacated alley; thence Easterly, on the centerline of said vacated alley, 27.68 feet; thence Northwesterly, 126.18 feet, to a point on the North line of Lot Eight (8), said Block Seven (7), said point being 21.00 feet East of the Northwest corner of said Lot Eight (8); thence Northwesterly, 63.57 feet, to the Southeast corner of Lot Ten (10), said Block Eight (8); thence Northerly, on the East line of said Lot Ten (10), 120.00 feet, to the Northeast corner of said Lot Ten (10); thence Westerly, on the Northerly line of Lots Ten (10), Eleven (11), Twelve (12) and Thirteen (13), said Block Eight (8), 200.00 feet, to the Northwest corner of said Lot Thirteen (13); thence Southerly, on the West line of said Lot Thirteen (13), 120.00 feet, to the Southwest corner of said Lot Thirteen (13); thence Southeasterly, on a 50.00 foot radius curve to the right (said curve being tangent to the North line of Chicago Street), an arc distance of 157.08 feet, to a point 100.00 feet South of the North right-of-way line of Chicago Street; thence Westerly, on a line 100.00 feet South of the North line of Chicago Street, 50.00 feet, to the point of beginning.

## EXCEPT

A tract of land located in Lot Eight (8) and part of vacated alley adjoining, and vacated Chicago Street, Block Seven (7), Hillside Addition No.1 to the City of Omaha, Douglas County, Nebraska, described as follows:

Referring to the Southeast corner of Lot Ten (10), Block Eight (8), Hillside Addition No.1 to the City of Omaha; thence Southerly a distance of 53.37 feet along the Westerly existing 30th Street right of way line to the point of beginning; thence Southerly deflecting 000 degrees 00 minutes 00 seconds a distance of 10.30 feet along the Westerly existing 30<sup>th</sup> Street right of way line; thence Southerly deflecting 016 degrees 13 minutes 30 seconds right, a distance of 126.21 feet along the Westerly existing 30th Street right of way line; thence Westerly deflecting 093 degrees 19 minutes 07 seconds right, a distance of 10.48 feet along said line; thence Northerly deflecting 089 degrees 53 minutes 04 seconds right, a distance of 135.71 feet to a point on the Westerly existing 30th Street right of way line to the point of beginning.

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**Exhibit B**

NONE

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