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Karen A. Yarbrough
Cook County Clerk
Date: 01/28/2021 09:43 AM Pg: 1 of 8

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606
Attn: Michael S. Kurtzon, Esq.

MORTGAGE MODIFICATION AGREEMENT

by and between

CHOXY HOTEL LLC,
an Indiana limited liability company

and

TCF NATIONAL BANK,
a national banking association,

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MORTGAGE MODIFICATION AGREEMENT

THIS MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is made as of the 1st day of December, 2020, by and between **CHOXY HOTEL LLC**, an Indiana limited liability company ("Borrower") and **TCF NATIONAL BANK**, a national banking association ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Twenty-Eight Million Six Hundred Eighty-Five Thousand and 00/100 Dollars (\$28,685,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of December 22, 2016 by and between Borrower and Lender (as amended, modified and restated from time to time, the "Loan Agreement"; all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement) and as evidenced by a certain Promissory Note dated as of December 22, 2016 in the principal amount of \$28,685,000.00 made payable by Borrower to the order of Lender, as amended and restated by a certain Amended and Restated Promissory Note dated as of even date herewith in the principal amount of \$27,747,285.67 (collectively, the "Note").

B. The Loan is secured by (i) a Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated December 22, 2016 from Borrower for the benefit of Lender recorded with the Cook County Recorder of Deeds (the "Recorder") on January 5, 2017 as Document No. 1700529064 ("Mortgage"), encumbering the real property and all improvements thereon legally described on Exhibit A thereto ("Property"), (ii) that certain Assignment of Leases and Rents dated December 22, 2016, from Borrower to Lender and recorded with the Recorder on January 5, 2017 as Document No. 1700529065 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated December 22, 2016 from Bruce W. White, an individual, Bruce W. White Revocable Trust dated May 24, 2006 and River North Historic District Holdings LLC, an Illinois limited liability company (collectively, "Guarantor"), and Borrower to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment dated December 22, 2016 made by Guarantor in favor of Lender (the "Payment Guaranty") and a Guaranty of Completion dated December 22, 2016 made by Guarantor in favor of Lender (the "Completion Guaranty") and, together with the Payment Guaranty, the "Guaranties").

D. Concurrently herewith, Lender, Borrower and Guarantor are entering into an Loan Document Modification Agreement of even date herewith (the "First Modification") for the purpose of changing the Maturity Date (as defined in the Loan Agreement) and changing certain covenants and agreements therein.

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E. Borrower and Lender desire to amend the Mortgage in order to change the Maturity Date (as defined in the Loan Agreement) to January 1, 2024.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein and in the First Modification, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Maturity Date.** The Maturity Date of the Note is changed to January 1, 2024 on the terms and conditions set forth in the Loan Documents, as amended by the First Modification. Any reference in the Note, the Mortgage, the Loan Agreement or any other Loan Document to the Maturity Date shall mean January 1, 2024.

2. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct in all material respects as of the date hereof, it being understood and agreed that the representations and warranties set forth in the Loan Agreement, the Mortgage, and the other Loan Documents shall be deemed made subject to the effect of facts and circumstances which are affecting the Property and arose as a result of or in connection with the COVID-19 pandemic (but only to the extent such facts and circumstances are similar to those which have generally affected the hotel industry as a result of or in connection with the COVID-19 pandemic).

(b) Upon execution of this Agreement, there will be no known Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

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3. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all reasonable out-of-pocket costs and expenses actually incurred by Lender in connection with this Agreement, including, without limitation, title fees, recording fees and reasonable attorneys' fees and expenses.

4. **Claims.** As of the date hereof, Borrower has no known claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents, as modified herein.

5. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents, this Agreement and the First Modification, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby and by the First Modification, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage", the "Guaranty" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage, the Guaranty and the other Loan Documents as amended hereby and by the First Modification. The paragraph and section headings used herein are for

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convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

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IN WITNESS WHEREOF, the Borrower and Lender have caused this Mortgage Modification Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

CHOXY HOTEL LLC, an Indiana limited liability company

By: White Lodging Services Corporation, an Indiana corporation, its Manager

By: 
Name: Bruce Hoffmann
Title: Chief Financial Officer

STATE OF INDIANA)
) SS.
COUNTY OF LAKE)

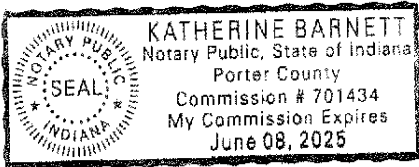
The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Bruce Hoffmann, the Chief Financial Officer of White Lodging Services Corporation, an Indiana corporation, the Manager of **CHOXY HOTEL LLC**, an Indiana limited liability company, who is personally 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 signed and delivered the said instrument as his 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 23 day of December, 2020.


Notary Public

My Commission Expires:

June 8, 2025



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LENDER:

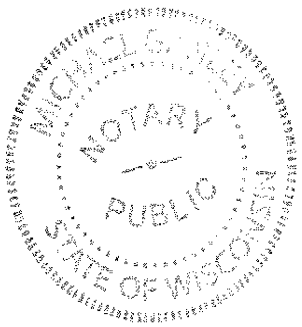
TCF NATIONAL BANK, a national banking association

By: *Justin K Strom*
Name: Justin K Strom
Title: Senior Vice President

STATE OF WISCONSIN)
) SS.
COUNTY OF Milwaukee)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Justin K Strom, the Senior Vice President of **TCF NATIONAL BANK**, a national banking association, 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 bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22 day of December 2020.



Michael S. Dwyer
Notary Public

Print Name: *Michael Dwyer*

My Commission Expires:
8-20-2021

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EXHIBIT A

THE PROPERTY

LOT 1 (EXCEPT THE EASTERLY 20.00 FEET THEREOF TAKEN FOR THE WIDENING TO LASALLE STREET), AND ALL OF LOT 2 AND LOT 3 (EXCEPT THE WEST 5.00 FEET THEREOF), ALL IN BLOCK 13 IN WOLCOTT'S ADDITION TO CHICAGO IN THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 530 North LaSalle Street
Chicago, IL

PIN: 17-09-238-012-0000

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