

Ent 515531 Bk 837 Pg 860-868
Date: 12-OCT-2016 3:17:49PM
Fee: \$27.00 Charge
Filed By: GKW
JOHN ALAN CORTES, Recorder
GRAND COUNTY CORPORATION
For: ANDERSON-OLIVER TITLE INSURANCE
AGENCY

WHEN RECORDED RETURN TO:
ZB, N.A. dba Zions First National Bank
Commercial Real Estate Region South Central Utah
55 West 100 North
Richfield, Utah 84701

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Agreement") is made and entered into this 30th day of August, 2016, by and among **Hotel Moab LLC**, a Utah limited liability company, whose address is 7000 Walkabout Ranch Road, Moab, Utah 84532, **EDB Moab, LLC**, a Utah limited liability company, whose address is 44 Wanderwood Way, Sandy, Utah 84092, and **ABLI Moab, LLC**, a Utah limited liability company, whose address is 44 Wanderwood Way, Sandy, Utah 84092 (collectively **Hotel Moab, EDB Moab and ABLI Moab** are hereinafter referred to as the "**Owner**"); **ZB, N.A. dba Zions First National Bank**, whose address is One South Main, Suite 470, in Salt Lake City, Utah, 84133 (hereinafter referred to as the "**Lender**"); **EDB Moab, LLC and ABLI Moab, LLC**, Utah limited liability companies, whose address is 44 Wanderwood Way, Sandy, Utah 84092 (collectively, hereinafter referred to as the "**Lessor**"); and **Hotel Moab LLC**, a Utah limited liability company, (hereinafter referred to as the "**Lessee**").

RECITALS:

A. **WHEREAS**, Owner is the owner of the Property located in Grand County, State of Utah, with an approximate address of 201 Walnut Lane, Moab, Utah, 84532, Grand County, State of Utah, more particularly described in the following:

Exhibit "A" attached and made part of this Agreement (hereinafter referred to as the "Subject Property").

B. **WHEREAS**, Business Resolutions, LLC, a Colorado limited liability company, as Trustee of the Moab Development Trust dated September 26, 2014 (hereinafter "Moab") conveyed and warranted the Subject Property to the Owner.

C. **WHEREAS**, prior to said conveyance of the Subject Property by Moab to Owner, Moab executed a Promissory Note in favor of Lender (hereinafter referred to as "Senior Note") secured by a Construction Deed of Trust and Fixture Filing (hereinafter referred to as "Senior Trust Deed") recorded on March 9, 2016 against the Subject Property as Entry Number 511076, book 827 at pages 635-659 in the Official Records of the Grand County Recorder's Office; and together with the other securing loan documents evidencing and/or securing the Senior Note (collectively referred to as the "Senior Loan

Documents") in favor of Lender.

C. **WHEREAS**, Lessor and Lessee have entered into a Ground Lease agreement with on 21st day of July, 2016 (hereafter referred to the "Lease") to lease the Subject Property;

D. **WHEREAS**, Owner, Lessor and Lessee are willing to subordinate their interest in the Lease agreement to the security interest of Lender in the Subject Property, as represented by the Senior Trust Deed and Senior Loan Documents, on the terms and conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Senior Lender to permit the Ground Lease agreement, it is hereby declared, understood and agreed as follows:

1. **Recitals**. The parties to this Agreement hereto agree that the recitals set forth above are accurate and the same are incorporated herein by this reference.
2. **Subordination of Lease**. Owner, Lessor and Lessee hereby unconditionally and fully subordinates all of the liens, rights, and interests it holds, has or in the future may have under or arising pursuant to the Lease, including, but not limited to the liens, rights, and interests, to the Senior Trust Deed and Senior Loan Documents.
3. **Senior Loan Documents**. The Owner, Lessor and Lessee agree that the Senior Trust Deed and Senior Loan Documents securing the Senior Note in favor of Senior Lender, and any renewals or extensions thereof, and all liens and charges thereunder shall each unconditionally be and remain at all times a lien or charge on the Subject Property herein described which is senior and paramount to the rights and to the lien or charge of the Lessor and Lessee; and to the lien or charge of the Lease for all purposes and at all times.
4. **Reliance**. In reliance of this Agreement, Senior Lender will permit the Lease to be recorded herewith and the Senior Lender, Owner, Lessor and Lessee shall execute this Subordination Agreement pursuant to the terms herein and the unconditional subordination of the Lease to all of the Senior Trust Deed and Senior Loan Documents, including, but not limited to, the Senior Note and the Senior Deed of Trust.
5. **Entire Agreement**. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Lease to the lien or charge of the Senior Trust Deed and Senior Loan Documents, including the Senior Note and the Senior Deed of Trust in favor of Senior Lender. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Senior Lender's Deed of Trust and

the Lease, with respect to the subject matter of this Agreement.

6. Venue, Governing Law and Legal Fees. Venue for the Dispute proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement can be reached then in Salt Lake City, Utah. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Upon the occurrence of a breach hereunder, the non-defaulting party shall be entitled to recover reasonable attorneys' fees and legal expenses incurred as a result of such default or breach and in exercising any rights and remedies.

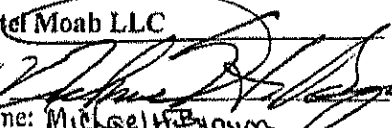
7. JURY TRIAL WAIVER. As permitted by applicable law, each party hereby waives their respective rights to a trial before a jury in connection with any Dispute (as "Dispute" is hereinafter defined). All Disputes shall be resolved by a judge sitting without a jury. "Disputes" mean and include any matter arising between or among the parties to this Agreement whether related to this Subordination Agreement or any other matters, including, but not limited to, any of the following:

- (i) claims, disputes, losses, damages, suits, or actions among or between any of the parties relating to this Agreement, the matters set forth herein, the validity, priority or enforcement of any lien or loan held by or for the benefit of any party, any deposit account held by or for a party, the application for or denial of credit to or with a party, enforcement of any of the obligations we have to each other, compliance with applicable laws and/or regulations, performance or services provided under any other agreement by or with any party, or
- (ii) claims, disputes, losses, damages, suits, or actions based on or arising from an alleged tort by between or among any party with any other party, or
- (iii) claims, disputes, losses, damages, suits, or actions involving the employees, agents, affiliates, or assigns of any party with those of any other party to this Agreement.


EXECUTED by the parties on the day and year first written above.

OWNER:

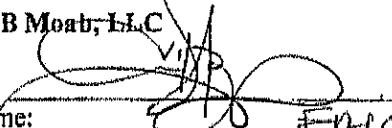
Hotel Moab LLC

By: 
Name: Michael E. Byrum
Its: Manager

ABLI Moab, LLC

By: 
Name: Eric D. Bishop
Its: MANAGER

EDB Moab, LLC

By: 
Name: Eric D. Bishop
Its: MANAGER


SENIOR LENDER:

ZB, N.A. dba Zions First National Bank

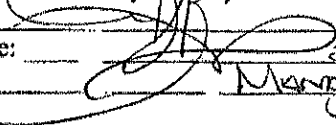
By: _____
Name: _____
Its: _____

LESSOR:

EDB Moab, LLC

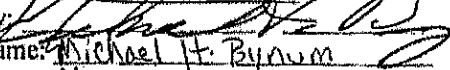
By: 
Name: Eric D. Bishop
Its: Manager

ABLI Moab, LLC

By: 
Name: Eric D. Bishop
Its: Manager

LESSEE:

Hotel Moab LLC

By: 
Name: Michael H. Bynum
Its: Manager

ACKNOWLEDGEMENT

STATE OF UTAH)
) ss.
COUNTY OF _____)

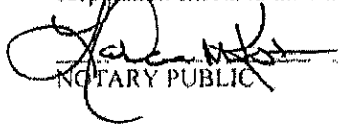
On the _____ day of August 2016, personally appeared before me _____, a signer of the foregoing instrument, who duly acknowledged to me that he executed the same in his capacity as the Vice President of ZB, N.A. dba Zions First National Bank and who further acknowledged that said national association executed the same.

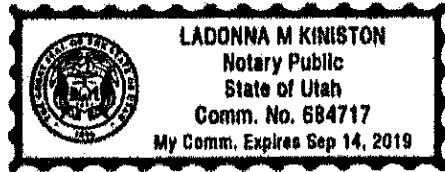
NOTARY PUBLIC

ACKNOWLEDGEMENT

STATE OF UTAH)
) ss.
COUNTY OF Grand)

On the 3 day of ~~August~~ October 2016, personally appeared before me Michael H. Bynum, a signer of the foregoing instrument, who duly acknowledged to me that he/she executed the same in his/her capacity as the Manager of Hotel Moab LLC, a Utah limited liability company and who further acknowledged that said corporation executed the same.


NOTARY PUBLIC

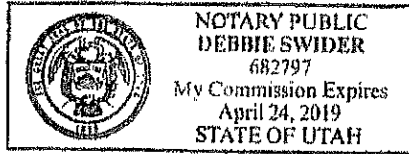


ACKNOWLEDGEMENT

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

On the 3rd day of ~~August~~ ^{Oct} 2016, personally appeared before me
Eric Dean Bishop, a signer of the foregoing
instrument, who duly acknowledged to me that he/she executed the same in his/her
capacity as the Manager of EDB Moab,
LLC, a Utah limited liability company and who further acknowledged that said
corporation executed the same.

Debbie Swider
NOTARY PUBLIC

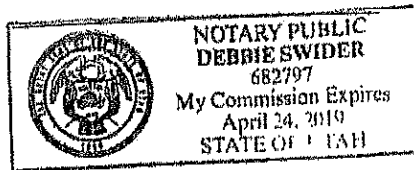


ACKNOWLEDGEMENT

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

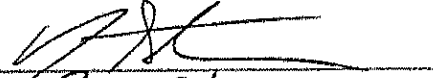
On the 3rd day of ~~August~~ ^{Oct} 2016, personally appeared before me
Eric Dean Bishop, a signer of the foregoing
instrument, who duly acknowledged to me that he/she executed the same in his/her
capacity as the Manager of ABLI Moab,
LLC, a Utah limited liability company and who further acknowledged that said
corporation executed the same.

Debbie Swider
NOTARY PUBLIC



SENIOR LENDER:

ZB, N.A. dba Zions First National Bank

By: 
Name: Ryan Stevenson
Its: Senior Vice President

LESSOR:

EDB Moab, LLC

By: _____
Name: _____
Its: _____

ABLI Moab, LLC

By: _____
Name: _____
Its: _____

LESSEE:

Hotel Moab LLC

By: _____
Name: _____
Its: _____

ACKNOWLEDGEMENT



STATE OF UTAH)
) ss.
COUNTY OF Washington)

On the 4th day of October ~~August~~ 2016, personally appeared before me
RYAN STEVENSON, a signer of the foregoing
instrument, who duly acknowledged to me that he executed the same in his capacity as
the Vice President of ZB, N.A. dba Zions First National Bank and who further
acknowledged that said national association executed the same.

Senior
Ⓟ

Alice J. Clay
NOTARY PUBLIC

ACKNOWLEDGEMENT

STATE OF UTAH)
) ss.
COUNTY OF _____)

On the _____ day of August 2016, personally appeared before me
_____, a signer of the foregoing
instrument, who duly acknowledged to me that he/she executed the same in his/her
capacity as the _____ of Hotel Moab
LLC, a Utah limited liability company and who further acknowledged that said
corporation executed the same.

NOTARY PUBLIC

EXHIBIT A

Legal Description

An undivided 47.11% tenant in common interest in that certain real property situated in Grand County, State of Utah and being more particularly described as follows:

Beginning at a 3/8" spike which bears South 1389.2 feet and West 667.1 feet from the North ¼ Corner, Section 1, Township 26 South, Range 21 East SLM, and proceeding thence South 0° 38' East 318.7 feet to a corner which bears 0.9 feet South and 0.1 feet East of a meta l fence post; thence South 08° 09' West 77.4 feet to a cedar post; thence South 52°23' West 147 .6 feet to a double cedar post; thence North 88°06' West 58.5 feet to a cedar fence post; thence North 26°04' West 156.1 feet to a ccdar fence post; thence South 89°45' West 43.2 feet to a cedar fence post; thence North 0°51' West 344.5 feet to a 3/8" spike; thence South 89°47' East 299.7 feet to the point of beginning. Bearing based on the centerline of 100 West Street (N 0°17' E). (Parcel No. 01-001-0158

LESS THE FOLLOWING:

- a. Beginning at a point which bears South 1872.7 feet and West 819.6 feet from the North ¼ Corner of Section 1, Township 26 South, Range 21 East, SLM, and proceeding thence with the South line of the Davis Tract North 88°06' West 32.5 feet; thence North 26° West 25.8 feet; thence with the North Right of Way with the proposed Williams Way South 58°30' East 11.3 feet; thence with a curve to the left, the chord of which bears South 61° 46' East 38.8 feet (Delta=6°33'05", Radius=339.25, Tangent=19.42 feet, Length=38.79) to the point of beginning; and
- b. Any portion within Williams Way.