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Book - 10845 Pg - 7763-7770
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 8 P.

WHEN RECORDED, RETURN TO:

Hillcrest Bank, a division of NBH Bank
7800 East Orchard Road, Suite 300
Greenwood Village, CO 80111

Tax Parcel Nos. 22-23-178-012 and
22-23-178-013 and 22-23-179-009

CT- 113172-CAF

ASSIGNMENT OF RENTS, LEASES AND OTHER INCOME

THIS ASSIGNMENT OF RENTS, LEASES AND OTHER INCOME (this "Assignment") made to be effective as of the 11th day of October, 2019, by SETS RE LLC, a Delaware limited liability company, whose address is 1877 South 200 E, Salt Lake City, UT 84115 ("Assignor") to HILLCREST BANK, a division of NBH Bank, a Colorado state bank, whose mailing address is 7800 East Orchard Road, Suite 300, Greenwood Village, CO 80111 ("Assignee").

WITNESSETH:

THAT, WHEREAS, Assignor has contemporaneously herewith executed that certain Promissory Note payable to the order of Assignee in the stated principal amount of \$4,150,000.00, and all extensions, modifications, renewals or replacements thereof (the "RE Note"); and

WHEREAS, Mountain West Brands, LLC, a Utah limited liability company and MWB MS Grill, LLC, a Utah limited liability company (collectively, the "MWB Entities") have executed the following notes, payable to the order of Assignee (the "MWB Notes"): (i) that certain promissory note dated December 10, 2018, in the original principal amount of \$15,600,000.00, and all extensions, modifications, renewals or replacements thereof; (ii) that certain promissory note dated December 10, 2018, in the original principal amount of \$2,000,000.00, and all extensions, modifications, renewals or replacements thereof; and (iii) that certain promissory note dated on even date herewith, in the original principal amount of \$4,000,000.00, and all extensions, modifications, renewals or replacements thereof; and

WHEREAS, Assignor is affiliated with the MWB Entities by common ownership and will benefit directly and indirectly from the funding of the MWB Notes. Further the assets of the MWB Entities are also being pledged as collateral to secure the repayment of the RE Note; therefore, Assignor acknowledges and agrees that there is sufficient consideration for the pledge of its assets to secure repayment of the debt of the MWB Entities; and

WHEREAS, the RE Note and the MWB Notes (collectively, the “Notes”) are secured by that certain Deed of Trust, Security Agreement and Fixture Filing (the “Deed of Trust”) of even date herewith from Assignor, as Grantor, for the use and benefit of Assignee, as Beneficiary, encumbering that certain real property situated in Salt Lake County, State of Utah, as is more particularly described on Exhibit A attached hereto and incorporated herein by this reference and all buildings and other improvements now or hereafter located thereon (collectively, the “Improvements”) (said real property and the Improvements are hereinafter sometimes collectively referred to as the “Property”); and

WHEREAS, Assignor is desirous of further securing to Assignee the performance of the terms, covenants and agreements hereof and of the Notes, the Deed of Trust, each covenant, condition, provision and agreement contained in that Loan Agreement of even date herewith, by and between Assignor and Assignee, each covenant, condition, provision and agreement contained in that Credit Agreement dated December 10, 2018, by and between the MWB Entities and Assignee, and each other document evidencing, securing, guaranteeing and/or relating to the indebtedness evidenced by the Notes, as each of the foregoing may from time to time be amended or replaced (collectively, the “Loan Documents”). Capitalized terms used herein which are not otherwise defined shall have the meanings set forth in the Loan Documents.

NOW, THEREFORE, in consideration of the making of the loan evidenced by the Note by Assignor to Assignee and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby irrevocably, absolutely and unconditionally transfer, sell, assign and convey to Assignee all of the right, title and interest of Assignor in and to:

(a) any and all leases, subleases, licenses, rental agreements and occupancy agreements of whatever form now or hereafter affecting all or any part of the Property and any and all guarantees, extensions, renewals, replacements and modifications thereof (collectively, the “Leases”); and

(b) all deposits (in whatever form provided), income, receipts, revenues, rents, issues, profits, revenues, royalties, rights, benefits and income of every nature of and from the Property, including, without limitation, minimum rents, additional rents, percentage rents, occupancy and user fees and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, liquidated damages following an Event of Default and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability due to destruction or damage to the Property, together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due, and together with all rights and claims of any kind that Assignor may have against any party, lessee or licensee under the Leases or against any other occupant of the Property and proceeds from any sale or other disposition of all or any portion of the Property, and all other benefits arising from the use or enjoyment of, or the lease, sale or other disposition of, all or any portion of the Property, together with the immediate and continuing right to receive all of the foregoing (collectively, the “Rents”).

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, as additional security for the payment of principal, interest and all other sums due Assignee under the Note, and the other Loan Documents, and for the observance, performance and discharge of each and every obligation, covenant and agreement to be observed, performed and discharged under the Loan Documents.

IT IS AGREED that, notwithstanding that this instrument is a present, absolute and executed assignment of the Rents and of the Leases and a present, absolute and executed grant of the powers herein granted to Assignee, Assignor is hereby permitted, and is hereby granted a license by Assignee to collect and retain the Rents unless and until there shall be an Event of Default under the terms of any of the Loan Documents. Upon the occurrence and during the continuance of an Event of Default, the aforementioned license shall automatically terminate, and Assignee may thereafter, without taking possession of the Property, collect the Rents. From and after such termination, Assignor shall be the agent of Assignee in collection of the Rents, any Rents so collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee and Assignor shall, promptly after receipt of any Rents, pay same to Assignee to be applied by Assignee as hereinafter set forth. Furthermore, from and after the occurrence of an Event of Default and termination of the aforementioned license, Assignee shall have the right and authority to: (a) manage and operate the Property with full power to employ agents to manage same; (b) collect the Rents, including those past due and unpaid; and (c) do all acts relating to such management,

including, but not limited to, negotiation of new Leases, making adjustments of existing Leases, contracting and paying for repairs and replacements to the Improvements and to the fixtures, equipment and personal property located in the Improvements and/or used in any way in the operation, use and occupancy of the Property as in the reasonable judgment and discretion of Assignee may be necessary to maintain the same in a tenantable condition, purchasing and paying for such additional furniture and equipment as in the reasonable judgment of Assignee may be necessary to maintain a proper rental income from the Property, employing necessary managers and other employees, purchasing fuel, providing utilities and paying for all other expenses incurred in the operation of the Property, maintaining adequate insurance coverage over hazards customarily insured against and paying the premiums therefor. Assignee may apply the Rents received by Assignee from the Property, after deducting the costs of collection thereof, including, without limitation, attorneys' fees and a management fee for any management agent so employed, against commercially reasonable amounts expended for repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums and such other expenses as Assignee incurs in connection with the operation of the Property, and against interest, principal and other sums which have or which may become due, from time to time, under the terms of the Loan Documents, in such order or priority as to any of the items so mentioned as Assignee, in its reasonable discretion, may determine. The exercise by Assignee of the rights granted Assignee in this paragraph, and the collection of the Rents and the application thereof as herein provided, shall not be considered a waiver by Assignee of an Event of Default under the Loan Documents or prevent foreclosure of any liens on the Property, Assignee hereby expressly reserving all of its rights and privileges under the Deed of Trust and the other Loan Documents as fully as though this Assignment had not been entered into.

Subject to applicable law, in the event Assignor shall fail to make any payment or to perform any act required under the terms hereof and such failure shall not be cured within any applicable grace period, then Assignee may, but shall not be obligated to, without prior notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, make or perform the same in such manner and to such extent as Assignee may reasonably deem necessary to protect the security hereof, including specifically, without limitation, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, performing or discharging any obligation, covenant or agreement of Assignor under any of the Leases, and, in exercising any of such powers, paying all necessary costs and expenses, employing counsel and incurring and paying attorneys' fees. Any sum advanced or paid by Assignee for any such purpose, including, without limitation, attorneys' fees, shall immediately upon notice to Assignor thereof be due and payable to Assignee by Assignor and if not so paid shall be added to the outstanding principal balance of the Note and shall bear interest at the default interest rate, as calculated under the Note (the "Default Interest Rate"), from the date paid or advanced by Assignee until repaid.

IT IS FURTHER AGREED that this Assignment is made upon the following terms, covenants and conditions:

1. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon Assignee, nor for the performance of any of the terms and conditions of any of the Leases, nor shall it operate to make Assignee responsible or liable to Assignor for any waste committed on the Property by the tenants or any other party or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or from any other act or omission of Assignee in managing the Property. Assignor shall and does hereby agree to indemnify and to hold Assignee harmless from and against any and all liability, loss, claim, demand or damage which may or might be incurred by reason of this Assignment arising out of or in any way related to the acts or omissions of Assignor, including, without limitation, claims or demands for security deposits from lessees of space in the Improvements deposited with Assignor unless due to the gross negligence or willful misconduct of Assignee. Should Assignee incur any liability by reason of this Assignment or in defense of any claim or demand for loss or damage as provided above, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, shall be immediately due and payable to Assignee by Assignor upon demand and if not so paid shall be added to the outstanding principal balance of the Note, shall bear interest at the Default Interest Rate from the date paid by Assignee until repaid.

2. This Assignment shall not be construed as making Assignee a mortgagee in possession.

3. Assignee is obligated to account to Assignor as to receipt of Rents and application of same toward the indebtedness secured hereby only to the extent that such Rents are actually collected by Assignee.

4. Assignor hereby further presently and absolutely assigns to Assignee: (a) any award or other payment which Assignor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any party under such Leases; and (b) any and all payments made by or on behalf of any party of any part of the Property in lieu of Rent. Assignor hereby irrevocably appoints Assignee as its attorney-in-fact to, from and after an Event of Default by Assignor under any of the Loan Documents which has not been cured within any applicable grace period, appear in any such proceeding and/or to collect any such award or payment.

5. Assignor represents, warrants and covenants to and for the benefit of Assignee: (a) that Assignor now is (or with respect to any Leases not yet in existence, will be immediately upon the execution thereof) the absolute owner of the landlord's interest in the Leases, with full right and title to assign the same and the Rents due or to become due thereunder; (b) that, other than this Assignment and those assignments, if any, specifically permitted in the Deed of Trust, there are, and will be, no outstanding assignments of the Leases or Rents; (c) that no Rents have been or will be hereafter, anticipated, discounted, released, waived, compromised or otherwise discharged without Assignee's prior written consent; (d) that, to Assignor's knowledge, there are no defaults now existing under any of the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; and (e) that Assignor shall observe and perform, in all material respects, all covenants, conditions and agreements in the Leases on the part of the landlord to be observed and performed thereunder.

6. Assignor covenants and agrees that Assignor shall not, without the prior written consent of Assignee: (a) execute any Lease on the Property, except as may be specifically permitted pursuant to the terms of the Loan Documents; (b) accept any payment of Rent or installments of Rent for more than one (1) month in advance; (c) take any action or exercise any right or option which would permit any party under any Lease to cancel or terminate said Lease; or (d) permit any Lease to become subordinate to any lien other than the lien of the Deed of Trust and the liens of those encumbrances, if any, specifically permitted in the Deed of Trust. Assignor shall promptly furnish to Assignee copies of all notices of default received by it from any party under any of the Leases, and Assignee shall have the right, at Assignor's expense, but shall not be obligated, to take commercially reasonable steps to cure any default by Assignor under any of the Leases. Any and all sums expended by Assignee with respect to any such cure shall, immediately upon notice thereof from Assignee, be due and payable to Assignee by Assignor, and, if not so paid, shall be added to the outstanding principal balance of the Note, shall bear interest thereafter until repaid at the Default Interest Rate.

7. Assignor covenants and agrees that Assignor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or tenant thereunder, and shall pay all costs and expenses, including, without limitation, attorneys' fees, which Assignee may incur in connection with Assignee's appearance, voluntary or otherwise, in any such action or proceeding, except to the extent resulting from the gross negligence or willful misconduct of Assignee.

8. At any time, Assignee may, at its option, notify any tenants or other parties of the existence of this Assignment. Assignor does hereby specifically authorize, instruct and direct each and every present and future tenant, lessee and licensee of the whole or any part of the Property to pay all unpaid and future Rents to Assignee upon receipt of demand from Assignee to so pay the same and Assignor hereby agrees that each such present and future tenant, lessee and licensee may rely upon such written demand from Assignee to so pay said Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Assignee is otherwise entitled to said Rents.

9. Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to any indebtedness secured hereby and may apply any other security therefor held by it to the satisfaction of any indebtedness secured hereby without prejudice to any of its rights hereunder.

10. The acceptance of this Assignment and the collection of the Rents following an Event of Default, as referred to above, shall be without prejudice to Assignee. The remedies of Assignee hereunder are cumulative and concurrent, may be pursued separately, successively or together and may be exercised as often as occasion therefor shall arise, it being agreed by Assignor that the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Assignee, at law or in equity or otherwise, so long as any obligation under the Loan Documents remains unsatisfied.

11. All rights of Assignee hereunder shall inure to the benefit of its successors and assigns; and all obligations of Assignor shall bind its successors and assigns. All rights of Assignee in, to and under this Assignment and in and to the security provided hereby shall pass to and may be exercised by any assignee of such rights of Assignee. Assignor hereby agrees that if Assignee gives notice to Assignor of an assignment of said rights, upon such notice the liability of Assignor to the assignee shall be immediate and absolute and Assignor will not set up any claim against Assignee or any intervening assignee as a defense, counterclaim or set-off to any action brought by Assignee or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the security provided hereby.

12. Any failure by Assignor in the performance or observance of any material covenant or condition hereof shall be a breach hereunder. Assignor shall have thirty (30) days after notice of such breach from Assignee within which to cure same. Any such breach not so cured shall be an Event of Default under this Assignment and each of the other Loan Documents, entitling Assignee to exercise all or any remedies available to Assignee under the terms of any or all of the other Loan Documents, and an Event of Default under any other Loan Document not cured within any applicable grace period shall be deemed an Event of Default hereunder subject to no additional grace period, entitling Assignee to exercise any or all remedies provided for herein.

13. Failure by Assignee to exercise any right which it may have hereunder shall not be deemed a waiver thereof unless so agreed in writing by Assignee, and the waiver by Assignee of an Event of Default hereunder shall not constitute a continuing waiver or a waiver of any other Event of Default or of the same Event of Default on any future occasion. No collection by Assignee of any Rents pursuant to this Assignment shall constitute or result in a waiver of any Event of Default then existing under any of the Loan Documents.

14. If any provision under this Assignment shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality and enforceability of any other provision of this Assignment.

15. This Assignment may not be amended, modified or otherwise changed except by a written instrument duly executed by Assignor and Assignee.

16. This Assignment shall be in full force and effect continuously from the date hereof to and until the Deed of Trust shall be released of record, and the release of the Deed of Trust shall, for all purposes, automatically render this Assignment null and void and of no effect whatsoever.

17. In case of a conflict between any provision of this Assignment and any provision of the other Loan Documents, the provision selected by Assignee in its sole subjective discretion shall prevail and be controlling.

18. All notices required or permitted to be given hereunder shall be in writing and may be given in person, by United States mail or by delivery service with a nationally recognized carrier. Any notice directed to a party to this Deed of Trust shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, two days after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Assignment or such other address as that party, from time to time, may specify by notice to the other parties. Any notice to Assignee or Assignor shall be sent to the address set forth on page one of this Assignment.

19. This Assignment and all claims or controversies arising out of or relating to this Assignment shall be governed by and construed according to the laws of the State of Colorado, without giving effect to conflict of laws principles which might otherwise require the application of the laws of another jurisdiction, provided, however,

that with respect to the creation, perfection, priority and enforcement of the lien of this Assignment, the laws of the State of Utah shall apply. Venue for all actions arising from this Assignment shall be in the District Court in and for the County of Arapahoe, State of Colorado or the county in which the Property is located. The parties hereto waive any objection which either may have based on lack of jurisdiction or improper venue or forum non conveniens to any suit or proceeding instituted by either party under this Assignment in any state or federal court with jurisdiction over the County of Arapahoe, State of Colorado, or the county where the Property is located, and consent to the granting of such legal or equitable relief as is deemed appropriate by such court.

20. This Assignment may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Assignment may be detached from any counterpart of this Assignment without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Assignment identical in form hereto but having attached to it one or more additional signature pages.

21. In addition to, but not in lieu of, any other rights hereunder, Assignee shall have the right to institute suit and obtain a protective or mandatory injunction against Assignor to prevent a breach or Event of Default, or to enforce the observance, of the agreements, covenants, terms and conditions contained herein, as well as the right to damages occasioned by any breach or Event of Default by Assignor.

22. This Assignment shall continue in full force and effect during any period of foreclosure and/or redemption with respect to the Property.

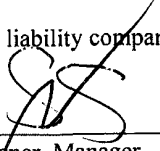
23. THE UNDERSIGNED AND ASSIGNOR (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND ASSIGNOR ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR ANY OTHER AGREEMENTS, DOCUMENTS OR INSTRUMENTS EXECUTED OR DELIVERED IN CONNECTION WITH, OR OTHERWISE RELATING TO, THE OBLIGATION OR ANY RELATIONSHIP BETWEEN THE UNDERSIGNED AND ASSIGNOR. THIS PROVISION IS A MATERIAL INDUCEMENT TO ASSIGNOR TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

<<SIGNATURE PAGE TO FOLLOW>>

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date set forth below to be effective as of the day and year first above written.

ASSIGNOR

SETS RE LLC
a Delaware limited liability company

By: 
Simon Shaner, Manager

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

Acknowledged before me this 14th day of October, 2019, by Simon Shaner, Manager of SETS RE LLC, a Delaware limited liability company, on behalf of the company.

Witness my hand and official seal.
My commission expires: 08-27-2023

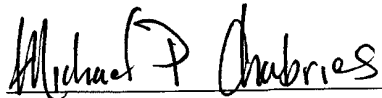

Notary Public



EXHIBIT A: LEGAL DESCRIPTION

PARCEL 1:

Beginning at a point which is North 00°08'51" East 540.34 feet along the section line and East 1725.01 feet from the West quarter corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said point being on the Northerly line of the land conveyed to Blue Cross and Blue Shield of Utah, a Utah corporation, in that certain Special Warranty Deed recorded January 17, 1996 as Entry No. 6259077 in Book 7311 at Page 849 of the official records of the Salt Lake County Recorder and running thence North 52°29'23" East 86.73 feet; thence North 79°12'42" East 119.00 feet; thence North 57°53'55" East 100.26 feet to a point on the centerline of Big Cottonwood Creek; thence along said centerline the following five (5) courses: South 10°59'32" East 138.07 feet, South 20°59'32" East 62.73 feet, South 50°00'00" East 95.00 feet, South 60°00'00" East 32.21 feet, and South 49°55'31" East 50.66 feet; thence leaving said creek centerline South 42°42'26" West 164.67 feet to a point on the centerline of Cottonwood Parkway (a private road), said centerline being the Northerly line of the aforementioned Blue Cross and Blue Shield of Utah property; thence along the centerline of said Cottonwood Parkway the following three (3) courses: North 77°30'44" West 27.42 feet to a point on a 330.00 foot radius curve to the right (radius bears North 12°29'16" East), thence along said curve 230.39 feet, thence North 37°30'37" West 213.48 feet to the point of beginning.

PARCEL 1A:

Rights of way and easements appurtenant to such real property set forth in the Declaration of Easements, Covenants and Restrictions, recorded January 17, 1996 as Entry No. 6259074 in Book 7311 at Page 821 of the official records, as amended by (i) the First Amendment to Declaration of Easements, Covenants and Restrictions, recorded July 3, 1996 as Entry No. 6398547 in Book 7437 at Page 265 of the official records, (ii) the Second Amendment to Declaration of Easements, Covenants and Restrictions, recorded May 2, 1997 as Entry No. 6635821 in Book 7658 at Page 2663 of the official records, and (iii) the Third Amendment to Declaration of Easements, Covenants and Restrictions, recorded July 22, 1997 as Entry No. 6696564 in Book 7716 at Page 980 of the official records, and (iv) the Fourth Amendment to Declaration of Easements, Covenants and Restrictions, recorded November 12, 1998 as Entry No. 7152537 in Book 8160 at Page 1199 of the official records, and (v) the Fifth Amendment to Declaration of Easements, Covenants and Restrictions, recorded February 25, 2004 as Entry No. 8987987 in Book 8950 at Page 2021 of the official records.

PARCEL 2:

Lot 2, COTTONWOOD CORPORATE CENTER SUBDIVISION, according to the official plat thereof, filed in Book 2004P of Plats at Page 45 of the official records of the Salt Lake County Recorder.