

When recorded, return to:

Actium Loan Management LLC
Actium High Yield Loan Fund IV LLC
Actium High Yield Loan Fund V LLC
Actium High Yield Loan Fund VI LLC
111 E. Broadway, Suite 390
Salt Lake City, Utah 84111

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8/25/2020 4:38:00 PM \$40.00
Book - 11005 Pg - 9598-9605
RASHELLE HOBBS
Recorder, Salt Lake County, UT
FIRST AMERICAN TITLE
BY: eCASH, DEPUTY - EF 8 P.

SUBORDINATION AGREEMENT

This Subordination Agreement ("Agreement") is made as of August 21, 2020, by and among Actium Loan Management LLC, a Utah limited liability company, Actium High Yield Loan Fund IV LLC, a Utah limited liability company, Actium High Yield Loan Fund V LLC, a Utah limited liability company, and Actium High Yield Loan Fund VI LLC, a Utah limited liability company (collectively, the "Senior Lender"), with its principal place of business at 111 E. Broadway, Suite 390, Salt Lake City, Utah 84111, Liston Enterprises, LTD., a Utah limited partnership ("Subordinated Lender"), and Dream Inn, LLC, a Utah limited liability company ("Borrower").

RECITALS

A. Borrower previously received certain loans and credit accommodations from Subordinated Lender as evidenced by certain agreements and documents (the "Subordinated Agreements"), which loans are secured by that certain Trust Deed dated December 23, 2016 and recorded with in Salt Lake County, Utah on or about January 3, 2017 as Entry No. 12446825 in Book 10517 at Page 4701 (the "Subordinated Trust Deed").

B. Senior Lender has agreed to extend loans or other credit accommodations to Borrower pursuant to that certain Loan Agreement and Promissory Note of even date herewith (together with any other agreements executed in conjunction therewith, the "Senior Loan Agreement").

C. In order to induce Senior Lender to extend loans and other credit accommodations to Borrower pursuant to the Senior Loan Agreement, and as a condition thereto, Subordinated Lender is willing to subordinate: (i) all of Borrower's indebtedness and obligations to such Subordinated Lender, whether presently existing or arising in the future (the "Subordinated Debt") to all of Borrower's indebtedness and obligations to Senior Lender; and (ii) Subordinated Lender's security interest in the Subordinated Trust Deed to Senior Lender's security interest in Borrower's property as evidenced by the Deed of Trust (the "Senior Trust Deed") to be executed by Borrower and recorded in conjunction with the execution and delivery of the Senior Loan Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereby agree as follows:

1. Subordinated Lender subordinates to Senior Lender any security interest or lien that Subordinated Lender may now or hereafter have in any property or assets of Borrower, including without limitation the Subordinated Trust Deed. Notwithstanding the respective dates of attachment or perfection of the security interest of Subordinated Lender and the security interest of Senior Lender, the security interest of Senior Lender in all property and assets of Borrower of any nature whatsoever (the "Collateral"), including without limitation the Senior Trust Deed, shall at all times be senior to the security interest of Subordinated Lender.

2. All Subordinated Debt is subordinated in right of payment to all indebtedness and obligations of Borrower to Senior Lender now existing or hereafter arising, including, without limitation, the Senior Loan Agreement, together with all amendments, renewals, extensions, and modifications thereof or thereto, plus any interest (including, without limitation, interest accruing after the commencement by or against Borrower of any bankruptcy, reorganization or similar proceeding), finance charges, fees (including, without limitation, any collateral handling fees, minimum finance charges, unused line fees, letter of credit fees, foreign exchange services fees and cash management services fees), expenses and all costs of collection of any of the foregoing (including, without limitation, attorneys' fees) (collectively, the "Senior Debt"). Notwithstanding the preceding or anything else to the contrary herein, Subordinated Lender shall have the right to receive all regularly-scheduled payments under the Subordinated Debt to Subordinated Lender for so long as no event of default has occurred under the Senior Loan Agreement.

3. Subordinated Lender will not demand or receive from Borrower (and Borrower will not pay to any Subordinated Lender) all or any part of the Subordinated Debt by way of prepayment, setoff, lawsuit or otherwise, nor will Subordinated Lender exercise any remedy with respect to the Collateral, nor will such Subordinated Lender accelerate the Subordinated Debt, or commence, or cause to commence, prosecute or participate in any administrative, legal or equitable action against Borrower, until such time as (i) the Senior Debt is fully paid in cash, (ii) Senior Lender has no commitment or obligation to lend any additional funds to Borrower, and (iii) all financing agreements between Senior Lender and Borrower are terminated.

In furtherance of the foregoing paragraph, if a default or event of default occurs in respect of the Subordinated Debt (a "Subordinated Debt Default"), Subordinated Lender agrees not to take any enforcement or other remedial action against Borrower or any of its property, or declare any default or event of default under such Subordinated Debt without the prior written consent of Senior Lender. Upon any such Subordinated Debt Default, Subordinated Lender shall promptly give written notice to Senior Lender of such default ("Subordinated Debt Default Notice"). Borrower hereby expressly acknowledge and agree that the delivery of such Subordinated Debt Default Notice by a Subordinated Lender to Senior Lender shall be an immediate event of default under the Senior Debt, for which there shall be no grace or cure period.

4. In the event of Borrower's insolvency, reorganization or any case or proceeding under any bankruptcy or insolvency law or laws relating to the relief of debtors, these provisions shall remain in full force and effect, and the Senior Debt shall be paid in full before any payment is made on any Subordinated Debt.

5. No amendment of the documents evidencing or relating to the Subordinated Debt shall directly or indirectly modify the provisions of this Agreement in any manner that might terminate or impair the subordination of the Subordinated Debt or the subordination of the Subordinated Trust Deed. Senior Lender shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Collateral except in accordance with the terms of the Senior Debt. All proceeds resulting from any sale, transfer or other disposition of the Collateral shall be applied first to the Senior Debt until payment in full thereof, with the balance, if any, to the Subordinated Lender or to any other entitled party.

At any time and from time to time, without notice to the Subordinated Lender, Senior Lender may take such actions with respect to the Senior Debt as Senior Lender, in its sole discretion, may deem appropriate, including, without limitation, extending the time of payment, increasing applicable interest rates, renewing, compromising, restating, or otherwise amending the terms of any documents affecting the Senior Debt and any collateral securing the Senior Debt, and enforcing or failing to enforce any rights against Borrower or any other person. No such action or inaction shall impair or otherwise affect Senior Lender's rights hereunder. Subordinated Lender waives the benefits, if any, of any statutory or common law rule that may permit a subordinating creditor to assert any defenses of a surety or guarantor, or that may give the subordinating creditor the right to require a Senior Lender to marshal assets, and Subordinated Lender agrees that it shall not assert any such defenses or rights. Notwithstanding the preceding or anything to the contrary herein, in the event of a default caused by Borrower's failure to make any required monthly payment of interest or other amount prior to the maturity date of the Senior Debt, Senior Lender shall provide Subordinated Lender with written notice of such monthly payment default and Senior Lender shall forbear from accelerating the principal balance of the Loan and will provide Subordinated Lender with thirty (30) days to cure such payment default by paying all past due amounts owing under the Senior Loan. If Subordinated Lender cures a monthly payment default in accordance with the preceding sentence, then Senior Lender will not take any actions after the date of such payment to enforce its rights under the Senior Trust Deed. In the event that Senior Lender accelerates the principal due under the Senior Loan due to Subordinate Lender's failure to satisfy any monthly payment default as described in the preceding portions of this paragraph or if Borrower fails to repay all amounts due hereunder as of the maturity date of the Senior Loan, then Senior Lender shall provide Subordinated Lender with written notice of such failure and shall provide Subordinated Lender with six (6) months to cure such default by repaying all amounts due and owing under the Senior Loan and during such six (6)-month period, Senior Lender may take steps to foreclose on the Collateral but will refrain from conducting a foreclosure sale or other disposition of the Collateral.

6. This Agreement shall be binding upon and inure to the benefit of the Subordinated Lender and Senior Lender and their respective successors and assigns. This Agreement shall remain effective until the Senior Debt is fully paid. This Agreement is solely for the benefit of the Subordinated Lender and Senior Lender and not for the benefit of Borrower or any other party.

7. Each party hereby agrees to execute such documents and/or take such further action as the other may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by the other party.

8. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The exchange of a fully executed Agreement by facsimile transmission or electronic transmission in .PDF format shall be sufficient to bind the parties to the terms and conditions of this Agreement and shall be deemed to be duplicate original documents and may be used by all parties for all purposes an original document may be used for and all signatures on such documents shall be deemed and treated for all purposes as original signatures. Execution and delivery of this Agreement by exchange of facsimile or other electronically transmitted counterparts bearing the signature of a party shall be equally as effective as delivery of a manually executed counterpart of such party.

9. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of Utah regardless of the laws that might otherwise govern under applicable principles of conflict of laws. The parties hereby irrevocably agree that any suit, action or other proceeding arising out of or based upon this Agreement brought by any other party or its successors or assigns shall be exclusively venued in the Utah.


10. This Agreement and the agreements and documents referenced herein represent the entire agreement with respect to the subject matter hereof, and this Agreement supersedes all prior negotiations, agreements and commitments. Neither party is relying on any representations by the other party in entering into this Agreement, and each has kept and will continue to keep itself fully apprised of the financial and other condition of Borrower. This Agreement may be amended only by written instrument signed by Subordinated Lender and Senior Lender and Borrower to the extent any such amendment affects Borrower.

[Remainder of page intentionally left blank]


IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

“Senior Lender”


Actium Loan Management LLC

By: 
Name: Paul Christenson
Title: Manager of Manager


Actium High Yield Loan Fund IV LLC

By: 
Name: Paul Christenson
Title: Manager of Manager

Actium High Yield Loan Fund V LLC


By: 
Name: Paul Christenson
Title: Manager of Manager

Actium High Yield Loan Fund VI LLC

By: 
Name: Paul Christenson
Title: Manager of Manager


“Borrower”

Dream Inn, LLC

By: 
Name: CHRIS L. BROWNE
Title: Authorized Signer

“Subordinated Lender”

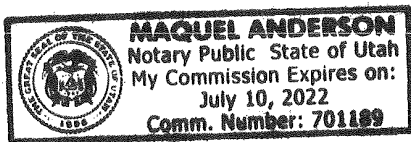
Liston Enterprises, LTD.

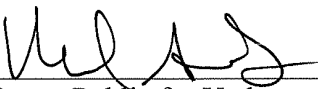
By: 
Name: DANIEL P. LISTON
Title: GENERAL PARTNER

STATE OF UTAH)
)ss.
Salt Lake County)

On this 21 day of August, 2020, before me, the undersigned, a notary public, in and for said State, personally appeared Paul Christenson, known or identified to me to be the Manager of Actium Loan Management LLC, Actium High Yield Loan Fund IV LLC, Actium High Yield Loan Fund V LLC, and Actium High Yield Loan Fund VI LLC and acknowledged to me that he executed the same as the Manager of each entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



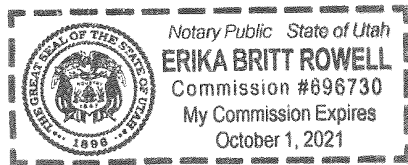


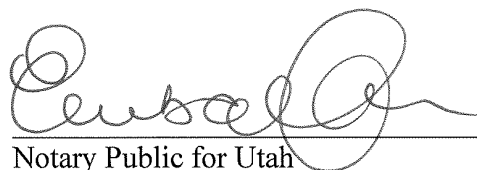
Notary Public for Utah
My Commission Expires: 7-10-22

STATE OF UTAH)
)ss.
Salt Lake County)

On this 21ST day of August, 2020, before me, the undersigned, a notary public, in and for said State, personally appeared Daniel P. Liston, as general Partner of Liston Enterprises, LTD., and acknowledged to me that he executed the same on behalf of Liston Enterprises, LTD.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.





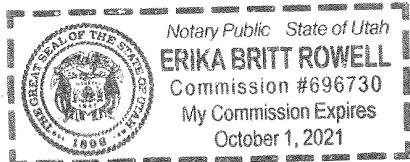
Notary Public for Utah
My Commission Expires: 10.1.21

STATE OF UTAH)

Salt Lake County)

On this 21st day of August, 2020, before me, the undersigned, a notary public, in and for said State, personally appeared Christ L. Browne known or identified to me to be the Authorized Signor of Dream Inn, LLC and acknowledged to me that he executed the same on behalf of such entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



A handwritten signature in cursive script, appearing to read "Erika Rowell".

Notary Public for Utah

Residing at:

My Commission Expires: 10.1.21

EXHIBIT 'A'

File No.: **301-5983233 (ER)**

Property: **1865 West North Temple Street, Salt Lake City, UT 84116**

COMMENCING 67 RODS EAST AND 404.5 FEET NORTH FROM THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN, IN THE CITY OF SALT LAKE, AND RUNNING THENCE NORTH 288.5 FEET TO THE SOUTH LINE OF NORTH TEMPLE STREET; THENCE EAST 161.5 FEET; THENCE SOUTH 288.5 FEET; THENCE WEST 161.5 FEET TO THE BEGINNING.

A.P.N. 08-34-353-006-0000