

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE:

**YASHAMAR, INC.,**

Debtor.

**Case No. 16-20264-JPK-11  
CHAPTER 11**

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**MOTION TO SELL REAL ESTATE TO SPECIFIC BUYER  
PURSUANT TO BANKRUPTCY CODE SECTION 363(b) FREE AND CLEAR OF INTERESTS, LIENS,  
CLAIMS AND ENCUMBRANCES AND TO DISTRIBUTE PROCEEDS IN ACCORDANCE WITH  
PRIORITY OF LIENS**

Yashamar, Inc., Debtor and Debtor in Possession, ("Debtor"), by counsel, pursuant to Sections 105, 363, and 506(c) of Title 11 of the United States Code (the "Bankruptcy Code"), Federal Rules of Bankruptcy Procedure 2002 and 6004, and local rule B-6004-1, requests an Order authorizing the sale of its 70 room Comfort Inns hotel located in Porter, Indiana, (the "Hotel") pursuant to the terms of that certain Purchase Agreement for Commercial Real Estate dated August 31, 2016 between the Debtor as Seller and Starmax Hospitality, Inc., as Buyer, (the "Sale Agreement"), free and clear of any interests, liens, claims and encumbrances with the sale proceeds to be distributed in accordance with priority of liens on the following grounds. A copy of the Sale Agreement is attached hereto as Exhibit "A".

**Jurisdiction and Venue**

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on February 11, 2016 ("Petition Date"). Since the Petition Date, the Debtor has been operating its estate as debtor-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108.

2. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. Sections 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. Section 1408. This matter is core within the meaning of 28 U.S.C. Sections 157(b)(2)(A), (N) and (O).

**Background**

3. The Hotel was built in 2009 for approximately \$5.5m. IPD Hospitality was hired by the Debtor to manage the daily operation of the hotel after construction began but before the hotel was open. Immediately upon being hired IPD advised the Debtor that the location would not support an investment the size of this one.

4. IPD was right. Revenue from operations, although steadily growing, has never been sufficient to cash flow operating costs and debt service. As a result, the principals of the Debtor have contributed just under \$2m to fund operating cash shortfalls since the Hotel opened.

5. Centier Bank is the primary secured creditor having a first priority mortgage interest in the Hotel. SBA has a subordinated second priority mortgage interest in the Hotel. The two lenders are owed approximately \$2,266,000 and \$1,314,000 respectively. The Debtor believes the best result for creditors in this situation is to engage in an orderly market sale of the asset. Upon closing such sale, proceeds will be paid in accordance with the priority of liens, and it is not expected that creditors other than Centier will receive proceeds.

6. As of the Petition Date, there were the following secured claims and property taxes due and owing and secured by liens on the Real Estate as follows:

Priority	Holder	Amount of Debt
1 <sup>st</sup>	Porter County Treasurer	\$20,794
2 <sup>nd</sup>	Centier	\$2,266,000
3 <sup>rd</sup>	SBA	\$1,314,000
	<b>total</b>	<b>\$3,600,794</b>

7. Debtor does not have the time or access to capital to make the Hotel a profitable enterprise that will generate money for the bankruptcy estate. As a result, Debtor believes that an orderly liquidation of the Hotel will benefit both the Debtor and the bankruptcy estate. The Debtor has entered into the Sale Agreement, which provides for a total purchase price of \$2,400,000, after diligent effort to obtain the highest return to the estate from its sale.

#### **RELIEF REQUESTED**

8. By this Motion, the Debtor seeks the entry of an order:

(a) authorizing the Debtor to sell the Hotel in accordance with the terms of the Sale Agreement, outside the ordinary course of business, pursuant to Bankruptcy Code Section 363(b);

(b) authorizing the Debtor to sell the Hotel free and clear of liens, claims, encumbrances, and interests pursuant to Bankruptcy Code Section 363(f) with liens to attach to the proceeds of sale;

(c) determining that the purchaser is a good faith purchaser pursuant to Bankruptcy Code Section 363(m);

(d) waiving the 14-day waiting period under Bankruptcy Rule 6004(h);

(e) ordering the proceeds of sale to be distributed in accordance with the priority of liens as set forth herein; and

(f) granting all other just and proper relief.

9. The Debtor believes that a sale of the Hotel is in the best interests of the Debtor's estate.

**BASIS FOR RELIEF REQUESTED**

10. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. Section 363(b)(1). Although the Bankruptcy Code does not articulate the standard for approving a sale of assets (other than requiring notice and a hearing), a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Dai-Ichi Kangyo Bank, Ltd v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999). Pursuant to Bankruptcy Rule 6004, "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." Fed. R. Bankr. P. 6004(f)(1).

11. The Debtor submits that sound business justification exists to sell the Hotel at this time and in the manner proposed. The Debtor has engaged in various attempts to generate offers for the Hotel over a period of time that began before the Petition Date. The Debtor negotiated with a well known hotel broker for terms of an engagement to employ such broker, but received the offer that lead to the Sale Agreement before seeking this Court's authority to do so. That broker nevertheless advised the Debtor that the purchase price under the Sale Agreement was a market price, and considering that no commission is due for the sale, the net return to the estate is enhanced.

12. Under Section 363(f) of the Bankruptcy Code, a debtor-in-possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to

accept a money satisfaction for such interest. 11 U.S.C. Section 363(f); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that § 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met).

13. Selling the Hotel free and clear of liens is permissible under Bankruptcy Code Sections 363(f)(2) and (5). Centier consents to this sale provided it receives the proceeds of sale in accordance with its first priority mortgage, after payment of real estate taxes and closing costs. Accordingly, the Hotel may be sold free and clear of liens, claims, encumbrances, or interests.

Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m).

14. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. By its terms, section 363(m) of the Bankruptcy Code applies to sales of interests in tangible assets, such as the Hotel.

15. As the proposed Sale Agreement represents an arm’s-length transaction in which the buyer will act in good faith, without collusion or fraud of any kind, the Debtor requests that the Court make the finding at the hearing on this Motion that the buyer shall be deemed a good faith purchaser entitled to the protections of Bankruptcy Code Section 363(m).

16. The Debtor hereby requests that the Court waive the 14-day stay period under Bankruptcy Rules 6004(h). Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtor requests that the Sale Order be effective immediately by providing that the 14-day stay under Bankruptcy Rules 6004(h) is waived so that the sale can close promptly.

17. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a

court should “order otherwise” and eliminate or reduce the fourteen (14) day stay period, Collier on Bankruptcy suggests that the stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy 15th Ed. Rev., ¶6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

18. The Sale Agreement requires a closing of the transaction within 30 days of acceptance. Accordingly, time is of the essence.

19. As described above the Sale Agreement represents the best possible net return to the estate from the sale of the Hotel. Furthermore, all known creditors will receive notice of this Motion and will have the opportunity to solicit buyers and ensure the highest possible bid is received. Therefore, the proposed sale of the Hotel is in the best interest of creditors.

20. There is no equity in the Hotel so it is necessary to surcharge creditors’ collateral for the costs of the sale including Debtor’s counsel’s fees. The Debtor proposes to surcharge each secured creditor a pro rata portion of those expenses based on the net proceeds to be received from the sale. It appears that only Centier Bank will receive any proceeds from the sale so it will bear the costs of such surcharge.

**WHEREFORE**, the Debtor respectfully requests that this Court enter an order approving the sale contemplated hereby, and granting all other just and proper relief.

Dated: September 22, 2016,

/s/ KC Cohen

KC Cohen

Attorney for the Debtor:  
KC Cohen 04310-49  
KC Cohen, Lawyer, PC  
151 N. Delaware St., Ste. 1106  
Indianapolis, IN 46204  
317.715.1845  
fax 636.8686  
[kc@smallbusiness11.com](mailto:kc@smallbusiness11.com)

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing was filed using the Court's ECF system and parties will be served via such system. In addition a copy of the forgoing was emailed to the following on the date it was filed:

[rameshsavani@yahoo.com](mailto:rameshsavani@yahoo.com);  
[nortonrick@ipdhospitality.com](mailto:nortonrick@ipdhospitality.com);  
[kc@esoft-legal.com](mailto:kc@esoft-legal.com);  
[USTPRRegion10.SO.ECF@usdoj.gov](mailto:USTPRRegion10.SO.ECF@usdoj.gov);  
[jennifer.prokop@usdoj.gov](mailto:jennifer.prokop@usdoj.gov);  
[jwprokop@yahoo.com](mailto:jwprokop@yahoo.com);  
[townsend@bcclegal.com](mailto:townsend@bcclegal.com);  
[plummer@bcclegal.com](mailto:plummer@bcclegal.com);  
[jyannako@kblegal.net](mailto:jyannako@kblegal.net);  
[jpoholarz@kblegal.net](mailto:jpoholarz@kblegal.net);

/s/ KC Cohen

KC Cohen

## PURCHASE CONTRACT

THIS PURCHASE CONTRACT (hereinafter "Contract") is made between **YASHAMAR, INC** (hereinafter the "Seller"), currently a Debtor in Possession in that certain pending chapter 11 case in the United States Bankruptcy Court for the Northern District of Indiana, Hammond Division under case number 16-20264-PJK-11, (the "Bankruptcy Case") and **STARMAX HOSPITALITY, INC.**, and/or its Assigns (collectively, the "Purchaser"). In consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

### ARTICLE I Sale and Purchase

Subject to the terms and provisions of this Contract, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to buy and pay for all of the following described property (sometimes referred to herein in the aggregate as the "Property"):

(a) those certain tracts of land commonly known as 1800 US Highway 20, Porter Indiana, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes, together with all of Seller's, right, title and interest in and to the rights and appurtenances pertaining to such tract of land, including, any right, title and interest of Seller in and to adjacent strips and gores between such tract of land and any abutting properties, adjacent roads, streets, alleys, easements or rights-of-way (collectively, the "Land"); Sale does not include the extra acreage as described on the Survey in exhibit A.

(b) the buildings, structures, fixtures and other improvements on the Land, including without limitation, the Comfort Inn & Suites by Choice Hotels branded hotels situated thereon (collectively, the "Improvements");

(c) all equipment, fixtures, machinery, building materials and other personal property owned by Seller and used in connection with the operation, management and maintenance of the Land and the Improvements, including without limitation, all keys, licenses, permits, books, records, plans and specifications, architectural and engineering drawings, trade names and trademarks (to the extent transferrable), contract rights, licenses, permits, consents and other intangible property pertaining to the Land and Improvements (collectively, the "Personal Property"); and

(d) at option of Purchaser, all, or any, of Seller's right, title and interest in and to all assignable contracts and agreements (collectively, the "Operating Agreements"), relating to the operation of the Land, Improvements or Personal Property which shall extend beyond the Closing Date, including specifically, without limitation, all booking reservation agreements and any

other service, supply and maintenance agreements, but expressly excluding the Choice Hotels Franchise Agreement which Purchaser agrees to assume.. Purchaser shall assume such franchise, service, supply and maintenance agreements that relate to the Property it chooses to assume in accordance with the assumption provisions in such agreements applicable to the transfer of ownership of the Property and shall hold Seller harmless from any and all obligations under the terms of said agreements.

## ARTICLE II Earnest Money Deposit

2.1 Amount and Title Company. Within five (5) business days following full and final execution of this Contract by both Purchaser and Seller, Purchaser shall deposit with Chicago Title Insurance Company agent, the sum of \$100,000.00 (the "Earnest Money"). Upon the expiration of the later (a) of the Title Review Period or Option Period, as defined in Section 4.3 and Section 4.4, respectively or, (b) the Due Diligence Period, as defined in Section 5.2 below, (c) financing contingency and franchise transfer approval, provided, however, that the franchise transfer shall be completed within 60 days from the expiration of the Due Diligence Period, the Earnest Money shall become non-refundable, except in the event of a Seller default hereunder. At such time as the Earnest Money becomes non-refundable, the parties hereby instruct the Title Company to release the Earnest Money to the Seller. All Earnest Money deposited pursuant to this Contract shall be applied toward the Purchase Price due by the Purchaser at Closing. Such funds shall be held for the benefit of both the Purchaser and Seller by the title company. Seller and Purchaser agree to execute an escrow agreement if such is required by the title company. In the event of a default, either party shall have remedies available in law and equity. The receipt of the deposit shall not affect the remedies available at law or equity to either party. In the event of default, the title company shall not return the deposit to either party except upon receiving a written agreement signed by both Purchaser and Seller, or a court order directing distribution of the funds.

## ARTICLE III Purchase Price

The total purchase price for the Property (the "Purchase Price") shall be Two Million Six Hundred Thousand and 00/100 Dollars (\$2,6000,000.00), payable by Purchaser delivering to the Title Company at Closing, cash by current wire transfer of federal funds or other evidence of current funds acceptable to the Title Company for immediate disbursement by the Title Company to Seller at Closing. Purchaser shall have the responsibility of providing same day immediately available funds so that disbursement of proceeds shall be made on the day of Closing.

Seller hereby acknowledges it is the intention of Purchaser to complete a deferred exchange and qualify for treatment under Internal Revenue Code Section 1031. This exchange will not delay the closing (of escrow) or cause additional expense to Seller. Purchaser's rights and obligations under this agreement may be assigned to a



Qualified Intermediary (as defined in IRS Regulation 1.1031(k)-1) of Purchaser's choice for the purpose of completing the exchange. Seller agrees to cooperate with Purchaser and the Qualified Intermediary in a manner necessary to complete this exchange.

#### ARTICLE IV Title and Surveys

4.1 Title Commitments. Within ten (10) days after the date of this Contract, Seller shall obtain and deliver to Purchaser (i) current commitment for Owner's Policies of Title Insurance in favor of Purchaser (the "Title Commitment") issued by the Title Company and (ii) legible copies of all instruments shown as exceptions in the Title Commitment. The Title Commitment shall describe the Land, which legal descriptions, unless modified by the Surveys in accordance with the terms and provisions of Section 4.2 below shall be incorporated into this Contract as Exhibit "A", and shall constitute the legal descriptions for purposes of the Closing documents. Notwithstanding the preceding, the Seller agrees to pay for the initial title search fee and the cost of the title insurance. The Purchaser agrees to pay the cost of the search from the date of the Title Commitment to the date of recording together with the cost of a mortgagee policy, if any, and all endorsements requested by Purchaser.

4.2 Surveys. Within sixty (60) days after the date of this Contract, Seller shall obtain and deliver to Purchaser current ALTA surveys (the "Surveys") of the Land and Improvements in Seller's possession. The Surveys shall include in the Property, the approximate dimensions as set forth on attached Exhibit B but providing for shared access to the water detention area. Seller and Purchaser shall enter into an agreement related to such water detention area providing for such shared access and responsibility for maintenance. All costs incurred in connection with the Survey cost borne by Seller. If the legal descriptions of the Land contained in the Surveys is different from the descriptions contained in Exhibit "A," the legal description on the Survey shall be substituted for the legal descriptions of the Land contained in Exhibit "A", and this Contract shall be deemed amended by the substitution of the legal descriptions of the Land contained in the Surveys for the description of the Land contained in Exhibit "A". Notwithstanding, such substitution must be acceptable to the Title Company.

4.3 Review of Title Commitments and Surveys. Purchaser shall have ten (10) days after the date of receipt of the last of the Title Commitments, copies of all instruments shown as exceptions in the Title Commitments and the Surveys (the "Title Review Period"), in which to notify Seller in writing of any objections Purchaser has to any matters shown or referred to in the Title Commitments or the Surveys. The standard preprinted exceptions in the Title Commitments: liens for current real estate taxes which are not yet due and payable; existing utility easements affecting the Property; discrepancies, conflicts in boundary lines, shortages in area, encroachments; any state of facts shown on the Surveys or which are shown on the public records; any service, installation, connection or maintenance charge, and charges for sewer, water, electricity, telephone, cable television, internet or gas due from and after the Closing;

easements and laws, regulations, resolutions or ordinances, including, without limitation, building, zoning and environmental protection, as to the use, occupancy, subdivision, development, conversion or redevelopment of the Property currently or hereinafter imposed by any governmental authority; any other restrictions, easements, encumbrances and other exceptions encumbering the Property which do not individually materially interfere with the continued use of the Property; and any other title encumbrances or exceptions set forth in the Title Commitments or on the Surveys which Purchaser does not object within the Title Review Period, shall be deemed to be permitted exceptions to the status of Seller's title (the "Permitted Exceptions").

4.4 Objections to Status of Title. In the event that Purchaser shall object to the status of Seller's title to the Property during the Title Review Period, Seller shall have ten (10) days after receipt of Purchaser's objections within which to satisfy such objections, if Seller elects to attempt to satisfy such objections (the "Cure Period"). In the event Seller does not agree to satisfy Purchaser's objections within the Cure Period (and Seller shall have no obligation whatsoever to satisfy any of Purchaser's objections or to expend any sum of money in doing so), Purchaser shall have the option, exercisable by delivery of written notice to Seller at any time within three (3) days after the date Seller has notified Purchaser as to Purchaser's objections which shall not be cured (the "Option Period"), to either (i) waive Purchaser's objections and purchase the Property as otherwise contemplated in this Contract, notwithstanding such objections and in which event the subject matter of such waived objections shall become Permitted Exceptions, and Seller shall convey the Property to Purchaser by the Deeds referred to in Section 7.4(a) hereof, subject to the Permitted Exceptions, or (ii) terminate this Contract, which shall be deemed a Permitted Termination as defined in Section 9.1 below. Upon such termination, the Earnest Money shall be refunded to the Purchaser, and the parties shall have no further rights or obligations hereunder except for the indemnities which expressly survive the termination of this Contract. In the event Purchaser fails to timely deliver written notice to Seller within the Option Period, Purchaser shall be deemed to have elected to waive Purchaser's objections, and shall have no further right to terminate this Contract pursuant to the terms of Article IV hereof.

#### ARTICLE V Investigation by Purchaser

5.1 Submission Matters Delivered to Purchaser. Within ten (10) business days after the date of this Contract, the Seller shall deliver to the Purchaser the following items (collectively, the "Submission Matters"), if within Seller's possession:

- (a) Historical operating statements for the years ending 2013 through 2016 (both year-to-date and monthly, if available);
- (b) Income and balance sheet statements for years 2013, 2014, 2015 and year to date;
- (c) Balance sheets for year-end 2013, 2014 and 2015 and year to date;
- (d) STR reports for 2013, 2014, 2015 and year to date;
- (e) Income tax returns for 2013, 2014 and 2015;

- (f) any leases for operations conducted at the improvements;
- (g) any available surveys, title insurance policies and evidence of zoning compliance.
- (h) The property improvement plan within 20 days from the date hereof.

All Submission Matters shall promptly be returned to Seller by Purchaser if this Contract is not consummated for any reason. The information contained in such materials shall remain confidential and shall not to be disclosed to any third party.

5.2 Due Diligence Period. Seller agrees that Purchaser shall have until thirty (30) days after the date of this Contract (the "Due Diligence Period") in which to review the Submission Matters and inspect the condition of the Property and to review such other matters as Purchaser deems necessary in order to determine the suitability of the Property for the Purchaser's needs. If within the Due Diligence Period, Purchaser shall for any reason in Purchaser's sole discretion, judgment and opinion, disapprove or be dissatisfied with the Submission Matters or any aspect of the Property, then Purchaser shall be entitled to terminate this Contract by giving written notice thereof to Seller prior to the expiration of the Due Diligence Period and the Earnest Money previously deposited by the Purchaser with the Title Company shall be immediately returned by the Title Company to the Purchaser, whereupon this Contract shall automatically be rendered null and void and of no further force and effect, except with respect to the indemnities which shall expressly survive any such termination. In the event Purchaser fails to notify Seller in writing on or before the expiration of the Due Diligence Period of its disapproval of the results of its inspections of the Property, then all of the Submission Matters and such inspections shall be conclusively deemed to have been approved.

5.3 Access to Property. During the term of this Contract, Purchaser and its agents and representatives, shall be entitled to enter upon the Property (as coordinated through Seller), including all leased areas, upon reasonable prior notice to Seller. Purchaser shall have a right to inspect the condition of the Property, conduct an examination of the Property (including without limitation, a physical inspection, appraisal and engineering inspection of the Property) and to review such other matters as Purchaser deems necessary in order to determine the suitability of the Property for Purchaser's needs.

Notwithstanding the foregoing, Purchaser shall not be permitted to interfere unreasonably with operations at the Property or interfere with any tenant's operations at the Property, and the scheduling of any inspections shall take into account the timing and availability of access to tenants' premises, pursuant to its rights under the leases or otherwise. Any meetings with tenants at the Property shall be conducted only with a representative of Seller in attendance. If Purchaser wishes to engage in any environmental testing or any other testing which shall damage or disturb any portion of the Property, Purchaser shall obtain Seller's prior written consent thereto, and such testing shall be conducted according to protocols reasonably established by Seller. Purchaser shall repair any damage to the Property caused by

any such tests or investigations, and indemnify Seller from any and all liabilities, claims, costs and expenses resulting therefrom. The foregoing indemnification shall survive Closing or the termination of this Contract.

5.4 Confidentiality. As a condition to Purchaser's receipt of information related to the Property ("Submission Matters"), Purchaser agrees to treat such information in accordance with the provisions of this Section 5.4 and to take or refrain from taking certain actions as hereinafter set forth. Purchaser agrees that the Submission Matters (a) shall be used solely for the purpose of evaluating the purchase of the Property, and (b) shall be kept confidential and shall not be disclosed to any person, firm or entity, except employees, consultants and representatives of Purchaser who need to know such information for the purpose of evaluating the potential purchase of the Property, and who have otherwise agreed to be bound by the terms of this Section 5.4. In addition, disclosure of the Submission Matters may be made upon receipt of the prior written consent of Seller. Purchaser acknowledges that given the confidential nature of the Submission Matters, Seller may be irreparably damaged by any unauthorized disclosure as provided herein. As a result thereof, Purchaser agrees that Seller may enforce this provision of the Contract by legal proceedings, including injunctive and other equitable relief. The agreement of Purchaser set forth in this Section 5.4 of the Contract shall expressly survive any termination of the Contract by either Seller or Purchaser as provided herein.

## ARTICLE VI

### Warranties and Representations and Employment Covenants

6.1 Seller's Warranties and Representations. Seller represents and warrants to Purchaser as of the date hereof and as of the Closing date that:

- (a) Seller shall obtain the survey called for in 4.2 above and shall attach to this agreement a new Exhibit "A" describing the property to be sold hereunder.
- (b) At Closing, Seller will have good and indefeasible fee-simple title to the Land and Improvements, and at the Closing, Seller shall convey to Purchaser good and indefeasible fee-simple title to the Land and Improvements, free and clear of all liens, defects, encumbrances, conditions, exceptions, restrictions or other matters affecting title, except the Permitted Exceptions.
- (b) Seller has the right, title and authority to enter into this Contract, to comply with all the terms and obligations hereof and to consummate the transactions provided for hereunder. This Contract shall, when executed and delivered by Seller, constitute the valid and binding obligation of Seller enforceable in accordance with its terms.
- (c) Seller is Debtor in Possession in that certain chapter 11 Bankruptcy Case currently pending before the United States Bankruptcy Court for the Northern District of Indiana in case number 16-20264. All of Seller's

obligations arising from this contract are expressly conditioned upon receiving authority from the Bankruptcy Court to enter into this transaction. Seller shall apply for such authority as soon as practicable after execution hereof.

- (d) Seller has no unpaid claims for labor or materials for work performed on the Land or Improvements, Seller will not permit any such claims to be placed upon the Land or Improvements, and there shall be no work or material performed or furnished affecting any of the Land or Improvements for which payment will not have been made by the Closing Date.
- (e) Except for the Bankruptcy Case, there is no judgment against Seller unsatisfied and there will be no such judgment against Seller unsatisfied as of the Closing Date.
- (f) Seller, and each of its owners, directors and officers have not received any notices from any municipal, county, state, federal or other governmental authority of environmental, zoning, building, tenants' rights, fire, health code or other violations of any statutes, codes, ordinances, rules or regulations with respect to the Real Estate, the Assets or the Business, except for the Bankruptcy Case.
- (g) There are and will be at the Closing no condemnation, judicial proceedings, lawsuits, administrative actions or examinations, claims or demands of any type which are pending or threatened affecting the Land or Improvements, except for the Bankruptcy Case.
- (h) Seller is not aware of any deferred maintenance or repairs affecting the Land or Improvements prior to the Closing Date.
- (i) Seller shall continue to operate the hotel in the ordinary course, keeping all inventory levels consistent with franchise guidelines until the Closing Date.

6.2 Purchaser's Representations and Warranties. Purchaser hereby represents and warrants as of the date hereof and as of the Closing Date that:

- (a) Purchaser has the right, title and authority to enter into this Contract, to comply with all the terms and obligations hereof and to consummate the transactions provided for hereunder. This Contract shall, when executed and delivered by Purchaser, constitute the valid and binding obligation of Purchaser enforceable in accordance with its terms.
- (b) There has not been filed by or, to Purchaser's knowledge, against Purchaser, a petition in bankruptcy or insolvency proceedings or for reorganization, or for the appointment of a receiver or trustee, nor has any such entity made an assignment for the benefit of creditors or filed a petition for an arrangement or entered into any arrangement with creditors or admitted in writing the inability to pay its debts as they become due.
- (c) The execution and delivery of this Contract and the transactions provided for herein shall not result in a breach of any of the terms and provisions of

or constitute a default under or conflict with any agreement, indenture, mortgage, lien, lease, consent, license, franchise or other instruments to which Purchaser or any person or entity which Purchaser represents is bound.

6.3 Intentionally left blank.

6.4 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants contained in Article 6 hereof shall survive the closing of this transaction for a period of six (6) months. If within such time Purchaser does not commence legal action against Seller for any inaccuracy in such representations and warranties, such representations and warranties shall be of no further force or effect.

## ARTICLE VII

### Closing

7.1 Time and Place of Closing. The consummation of the transaction evidenced by this Contract (the "Closing") shall take place at the offices of the Title Company, or such other location and/or time mutually agreed upon by Purchaser and Seller, on within sixty days from the execution of the Contract.

7.2 Closing Costs. All Closing costs shall be shared equally by the parties, except Seller shall pay the initial title search and the premium for the Owners' Policies of Title Insurance (the "Policies") issued by the Title Company, and Purchaser shall pay the costs of the Phase I Reports, any endorsements to the Policies, Phase I Reports, Zoning Reports and all fees due any lender providing financing to Purchaser. All transfer and mortgage taxes shall be paid by the Purchaser. Each party shall pay its own attorneys' fees; provided, however, in the event of any litigation arising hereunder, the prevailing party shall be entitled to recover, as part of any judgment rendered, reasonable attorneys' fees and cost of suit from the losing party. Except as otherwise provided in this Section 7.2 or elsewhere in this Contract, all other expenses hereunder shall be paid by the party incurring such expenses.

7.3 Prorations.

- (a) Room revenue generated from the Property, operating expenses relating to the Property and accounts receivable from operation of the Property shall be prorated between the parties as of the date of Closing. Purchaser shall receive all room revenue and other income and bear all operating expenses after the Closing Date. Seller and Purchaser agree to cooperate with each other to have Purchaser either replace identified vendor deposits or reimburse Seller for deposits to be left in place. Seller shall give Purchaser a credit for all guest deposits and payments received prior to Closing for activity occurring after the Closing. Purchaser agrees to indemnify, defend and hold harmless Seller for all claims, liabilities

and expenses (including without limitation, attorney's fees and costs) related to or arising from operation of the Property after the Closing Date.

- (b) Real property, ad valorem and personal property (if any) taxes, sewer rents and charges, and other state and county municipal taxes, special or otherwise (collectively the "Taxes") for the then current tax year for which the same are levied, imposed or assessed which are liens and which are due and payable in such year shall be prorated at Closing effective as of the Closing Date. If Closing shall occur before the tax rate is fixed for the then current tax year, the apportionment of the Taxes shall be upon the basis of the tax rate for the preceding year. Any difference in the actual and estimated taxes and assessments shall be adjusted in cash between the parties within thirty (30) days following receipt of information confirming the actual amounts thereof. All taxes imposed because of a change of use or ownership of the Property after or in connection with the Closing shall be the responsibility of Purchaser.
- (c) The Purchaser agrees to pay to Seller any accounts receivable due and owing to the Seller accruing prior to the Closing Date when received.

7.4 Deliveries at Closing. At the Closing:

- (a) Seller shall deliver to Purchaser the following:
  - (i) Warranty Deed (the "Deeds") duly executed and acknowledged by Seller, conveying to Purchaser good and indefeasible fee-simple absolute title to the Land, free and clear of any lien, encumbrance or exception other than the Permitted Exceptions.
  - (ii) Blanket Conveyances, Bills of Sale and Assumption Agreements, duly executed by Seller, conveying to Purchaser the Personal Property, free and clear of any lien, encumbrance or exception.
  - (iii) An Assignment and Assumption of Contracts, assigning all of Seller's interest under the Operating Agreements, duly executed by the Seller.
  - (iv) An Assignment and Assumption of Landlord's Interest in Leases, covering any equipment leases at the Improvements, duly executed by the Seller.
  - (v) The Policies issued by the Title Company, conforming to the requirements of Article IV above, insuring Purchaser's title in the amount of the Purchase Price and containing no exceptions other than (a) the standard printed exceptions; (b) the lien for current taxes, and subsequent assessments for prior years due to change in land usage or ownership; (c) the Permitted Exceptions; and (d) other exceptions, if any, which Purchaser may approve. The

exception for restrictive covenants shall be deleted or the Title Company shall indicate, following such exception, those restrictive covenants included among the Permitted Exceptions.

- (vi) A non-foreign certificate executed by Seller as required by Section 1445 of the Internal Revenue Code, as amended.
  - (vii) Possession of the Property, subject only to the Permitted Exceptions.
  - (viii) Such other instruments and documents as are reasonably appropriate, necessary and required by the Title Company or Purchaser to complete and evidence the transactions contemplated hereby.
  - (ix) Such evidence of the authority and capacity of Seller and its representatives, as Purchaser or the Title Company may reasonably require.
- (b) Purchaser shall deliver to Seller the following:
- (i) The cash payment due in accordance with Article III hereof.
  - (ii) The Blanket Conveyances, Bills of Sale and Assumption Agreements, duly executed by Purchaser.
  - (iii) The Assignment of Contracts and Assumption of Landlord's Interest in Leases, duly executed by the Purchaser.
  - (iv) Such other instruments and documents as are reasonably appropriate, necessary and required by the Title Company or Seller to complete and evidence the transactions contemplated hereby.

#### ARTICLE VIII

##### Disclaimer: Release and Waiver of Claims

Purchaser shall acquire the Land and Improvements in their "AS IS", "WHERE IS" condition in reliance solely on its own inspections and without any representations or warranties whatsoever from Seller, except for the promises, covenants, agreements, guaranties, representations and warranties contained in this Agreement or in any document delivered and/or executed pursuant to this Agreement. Purchaser agrees that Purchaser will accept the Land and Improvements, in their then condition as-is and with all faults. Purchaser acknowledges and agrees that, except for the promises, covenants, agreements, guaranties, representations and warranties contained in this Agreement or in any document delivered and/or executed pursuant to this Agreement, Seller has not made, does not make, and specifically negates and disclaims any, representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever.



whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Land and Improvements.

Except for the promises, covenants, agreements, guaranties, representations and warranties contained in this Agreement or in any document delivered and/or executed pursuant to this Agreement, Purchaser further acknowledges and agrees that having been given the opportunity to inspect the Land and Improvements, Purchaser is relying solely on its own investigation of the Land and Improvements and its own analysis and review of such information and documentation, and not on any information provided or to be provided by Seller.

#### ARTICLE IX Default and Remedies

9.1 Default by Seller. Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

- (a) Any of Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect when made or at Closing;
- (b) Seller shall fail to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Contract, for any reason other than default by Purchaser; or
- (c) Seller shall fail to deliver at the Closing any of the items required of Seller in Section 7.4(a) hereof, for any reason other than default by Purchaser.

In the event of a default by Seller hereunder, Purchaser may, as Purchaser's sole and exclusive remedy, terminate this Contract by written notice delivered to Seller at or prior to Closing and the Earnest Money shall be returned to Purchaser. Each such termination permitted under this Section 9.1 shall be referred to as a "Permitted Termination."

9.2 Default by Purchaser. Purchaser shall be in default hereunder upon the occurrence of any one or more of the following events:

- (a) any of Purchaser's warranties or representations set forth herein are untrue or inaccurate in any material respect when made or at Closing;
- (b) Purchaser shall fail to meet, comply with or perform any covenant, agreement, or obligation on its part required within the time limits and in the manner required in this Contract, for any reason other than a Permitted Termination; or
- (c) Purchaser shall fail to deliver at the Closing any of the items required of

Purchaser in Section 7.4(b) hereof, for any reason other than a Permitted Termination.

IN THE EVENT OF A DEFAULT BY PURCHASER HEREUNDER, SELLER, AS SELLER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, SHALL BE ENTITLED TO (I) ENFORCE REMEDY OF SPECIFIC PERFORMANCE; OR (II) TERMINATE THIS CONTRACT BY NOTICE TO PURCHASER AND RETAIN PURCHASER'S EARNEST MONEY, INCLUDING ANY INTEREST ACCRUED THEREON, AND RECEIVE REIMBURSEMENT FROM PURCHASER IN THE AMOUNT EQUAL TO PURCHASER'S ACTUAL OUT-OF-POCKET EXPENSES, IT BEING AGREED BETWEEN PURCHASER AND SELLER THAT SUCH SUM SHALL BE LIQUIDATED DAMAGES FOR A DEFAULT BY PURCHASER HEREUNDER BECAUSE OF THE DIFFICULTY, INCONVENIENCE, AND UNCERTAINTY OF ASCERTAINING ACTUAL DAMAGES FOR SUCH DEFAULT. SELLER AND PURCHASER HEREBY DIRECT THE TITLE COMPANY TO PAY SELLER THE EARNEST MONEY UPON OCCURRENCE OF THE FOREGOING.

ARTICLE X  
Miscellaneous

10.1 Casualty/Condemnation. If, prior to the Closing, condemnation proceedings are threatened or commenced or a casualty occurs with respect to any portion of the Land or Improvements, Seller may terminate this Contract by delivering a written termination notice to Purchaser on or prior to the Closing Date.

10.2 Notices. Any notices, consents or other communications required or permitted to be given pursuant to this Contract must be in writing and shall be sent to the address set forth below (or such other address as the party might hereafter designate for itself by notice to the other parties as required hereby). Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage pre-paid; by hand delivery; or by overnight courier service. Any such notice or communication shall be effective on (a) the date of receipt if delivered personally; (b) three (3) days after deposit in an official depository under the regular care and custody of the United States Postal Service, if transmitted by registered or certified mail, return receipt requested; or (c) the first business day after the date of deposit, if transmitted by overnight courier service, whichever shall first occur.

If to Seller: YASHAMAR, Inc.  
C/o IPD Hospitality, Inc.  
3479 Lawrenceville Suwanee Road Suite B  
Suwanee, GA 30024

With a Copy to: KC Cohen, Lawyer, PC  
151 N Delaware St., Ste. 1106  
Indianapolis, IN 46204  
kc@esoft-legal.com

If to Purchaser:

\_\_\_\_\_

With a Copy to:

If to Title Company:

10.3 Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the State of Indiana. This Contract is performable and venue for any action hereunder shall be in the Circuit Court of Macon County, Illinois.

10.4 Entire Agreement; Modifications. This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations and statements (oral or written) are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

10.5 Counterpart Execution. This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute one and the same instrument.

10.6 Captions; Construction. The captions which have been used throughout this Contract have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Contract. Words of any gender used in this Contract shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder," and other similar compounds of the words "here" when used in this Contract shall refer to the entire Contract and not to any particular provision or section.

10.7 Time is of the Essence. With respect to all provisions of this Contract, time is of the essence; provided, however, if the final date of any period set forth herein (including, but not limited to, the Closing Date) falls on a Saturday, Sunday or legal holiday under the laws of the State of Illinois or the United States of America, the final date of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. The term "days" as used herein shall mean calendar days. The term "business days" as used herein shall mean calendar days except Saturdays, Sundays or legal holidays under the laws of the State of Illinois, or the United States of America.

10.8 Invalid Provisions. If any term, provision, condition or covenant of this Contract or the application thereof to any party or circumstance shall, to the extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law, and said invalid or unenforceable term, provision, condition or covenant shall be substituted by a term, provision, condition or covenant as near in substance as may be valid and enforceable.

10.9 Assignment; Binding Effect. This Contract shall be binding upon and inure to the benefit of Seller and Purchaser, and their respective heirs, personal representatives, successors and permitted assigns. Except as expressly provided herein, nothing in this Contract is intended to confer on any person, other than the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, any rights or remedies under or by reason of this Contract.

10.10 Further Acts. In addition to the acts recited in this Contract to be performed by Seller and Purchaser, Seller and Purchaser agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

10.11 Exhibits. All references to exhibits contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes the same as if set forth herein verbatim, it being expressly understood that if any exhibit attached hereto which is to be executed and delivered at Closing contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained herein and as contemplated herein prior to or at the time of execution and delivery thereof.

10.12 Date of Contract. All references to the "date of this Contract" or similar references as used herein shall be deemed to mean the date, whichever is latest, that this Contract has been fully executed by Seller and Purchaser, as indicated by their signatures below, and delivered to and acknowledged by the Title Company.

10.13 Attorneys' Fees. If either party shall be required to employ an attorney to enforce or define the rights of such party hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

10.14 Offer and Acceptance. If this Contract is executed first by Purchaser and then delivered to Seller, it shall be construed as an offer to purchase the Property from Seller by Purchaser on the terms and conditions, and for the Purchase Price stated herein. If executed first by Seller and then delivered to Purchaser, it shall constitute an offer to sell the Property to Purchaser by Seller on the terms and conditions and to the Purchase Price stated herein.

ARTICLE XI  
Financing Contingency

11.1 Financing. This Agreement and Purchaser's obligations hereunder are contingent upon Purchaser obtaining financing to fund its obligations hereunder of no greater than 80% of the Purchase Price (correspondingly, no less than 20% cash equity). If Purchaser is unable to secure a firm financing commitment on terms and conditions reasonably satisfactory to Purchaser within sixty (60) days following the expiration of the Due Diligence Period, then Purchaser may declare this agreement null and void, whereupon all funds deposited by Purchaser hereunder shall be returned to Purchaser.

ARTICLE XII  
Franchise Transfer

12.1 Franchise Transfer. The Purchase is contingent upon the transfer of the current Choice Hotels franchise agreement being transferred from Seller to Purchaser, or Purchaser entering into a new franchise agreement with Choice Hotels. Under either circumstance, Purchaser acknowledges and agrees to obtain a full release for the Seller and its principals for any liability pertaining to the Choice Hotels franchise. The Purchaser agrees to use best business efforts to apply for the franchise approval from Choice Hotels no later than five (5) days after execution of this Contract.

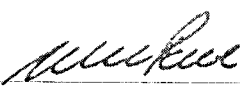
SELLER:

PURCHASER:

**YASHAMAR, INC.**

**STARMAX HOSPITALITY, INC.,**

By: \_\_\_\_\_  
Its Manager

By:  \_\_\_\_\_  
Its President  
8/30/2016

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SELLER:

YASHAMAR, INC.

By: 

Its Manager

8/31/2016

PURCHASER:

STARMAX HOSPITALITY, INC.,

By: 

Its President

8/30/2016

**RECEIPT OF EARNEST MONEY  
AND AGREEMENT OF TITLE COMPANY**

**Chicago TITLE, INC.,**(the "Title Company") hereby acknowledges the receipt of the following:

- (i) One (1) fully signed and executed copy of this Contract; and
- (ii) The Title Company hereby agrees to hold the Earnest Money as contemplated by this Contract and to dispose of it in strict accordance with the terms and provisions of this Contract.

Chicago Title, Inc.

By: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description**

to be inserted after survey is complete



### FIRST ADDENDUM PURCHASE CONTRACT

THIS FIRST ADDENDUM is made to that certain PURCHASE CONTRACT (hereinafter "Contract") dated August 31, 2016, between **YASHAMAR, INC** (hereinafter the "Seller"), currently a Debtor in Possession in that certain pending chapter 11 case in the United States Bankruptcy Court for the Northern District of Indiana, Hammond Division under case number 16-20264-PJK-11, (the "Bankruptcy Case") and STARMAX HOSPITALITY, INC., and/or its Assigns (collectively, the "Purchaser"). Except as expressly otherwise set forth herein the terms of the Contract shall remain in full force and effect. Seller and Purchaser agree to modify the Contract as follows:

#### ARTICLE III Purchase Price

The total purchase price for the Property (the "Purchase Price") shall be Two Million Four Hundred Thousand and 00/100 Dollars (\$2,400,000.00).

#### ARTICLE V Investigation by Purchaser

5.2 Due Diligence Period. The parties agree that upon execution of this Addendum, the due diligence period established by the Contract is terminated and Purchaser shall no longer have any due diligence contingencies under the Contract.

SELLER:

PURCHASER:

**YASHAMAR, INC.**

**STARMAX HOSPITALITY, INC..**

By: 

Its President

By: 

Its President

9/21/2016