

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

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|--|--|-----------------------|-------------------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| Carmel Valley Mortgage Borrower L.L.C. | | 06/11/2009 | LIMITED LIABILITY COMPANY: DELAWARE |
| RECEIVING PARTY DATA | | | |
| Name: | Papaco Holdings, LLC | | |
| Street Address: | Pier 5, The Embarcadero, Suite 102 | | |
| Internal Address: | c/o Geolo Capital | | |
| City: | San Francisco | | |
| State/Country: | CALIFORNIA | | |
| Postal Code: | 94111 | | |
| Entity Type: | LIMITED LIABILITY COMPANY: DELAWARE | | |
| PROPERTY NUMBERS Total: 1 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 2002081 | CARMEL VALLEY RANCH | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | (312)521-2875 | | |
| | <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i> | | |
| Phone: | 3125212775 | | |
| Email: | ipdocket@muchshelist.com | | |
| Correspondent Name: | Adam K Sacharoff | | |
| Address Line 1: | 191 N Wacker Drive, Suite 1800 | | |
| Address Line 2: | MUCH SHELIST | | |
| Address Line 4: | Chicago, ILLINOIS 60606 | | |
| ATTORNEY DOCKET NUMBER: | PAPACO HOLDINGS - TM CVR | | |
| NAME OF SUBMITTER: | Adam K Sacharoff | | |
| Signature: | /aks/ | | |

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 REEL: 004252 FRAME: 0282

Date:

08/02/2010

Total Attachments: 11

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AGREEMENT OF PURCHASE AND SALE

among

CARMEL VALLEY MORTGAGE BORROWER L.L.C., the SELLER

and

PAPACO HOLDINGS, LLC and GANBEI, INC., the BUYER

Dated as of June 11, 2009

AGREEMENT OF PURCHASE AND SALE

AGREEMENT OF PURCHASE AND SALE (this "Agreement"), made as of June 11, 2009, by and among CARMEL VALLEY MORTGAGE BORROWER L.L.C., a Delaware limited liability company (the "Seller"), and PAPACO HOLDINGS, LLC, a Delaware limited liability company (the "Resort Buyer") and GANBEI, INC., a Delaware corporation (the "Liquor Assets Buyer" and, together with the Resort Buyer, the "Buyer").

Background

A. The Seller is the owner of the land more particularly described in Schedule A attached hereto (the "Land"). The Seller is also the owner of the resort facility including a hotel, golf course, clubhouse, tennis facility and related facilities located on the Land having an address at 1 Old Ranch Road, Carmel, California and commonly known as the "Carmel Valley Ranch" (the "Hotel"). The Land and the Hotel shall be referred to herein, collectively, as the "Property"; the Property and the Asset-Related Property (as defined below) shall be referred to herein as the "Asset."

B. The Seller desires to sell to the Resort Buyer, and the Resort Buyer desires to purchase from the Seller, the Asset on the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Defined Terms. The capitalized terms used herein will have the following meanings.

"Accounts Receivable" shall mean all amounts which the Seller is entitled to receive from the operation of the Hotel, but are not paid as of the Closing, including, without limitation, charges for the use or occupancy of any guest, conference, meeting or banquet rooms or other facilities at the Hotel, or any other goods or services provided by or on behalf of the Seller at the Hotel, but expressly excluding any credit card charges and checks which the Seller has submitted for payment as of the Closing.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by or under direct or indirect common Control with such Person.

"Agreement" shall mean this Agreement of Purchase and Sale, together with the

“Seller’s Knowledge” shall mean the actual knowledge of the Seller based upon the actual knowledge of Karen Sprogis without any duty on the part of such Person to conduct any independent investigation or make any inquiry of any Person.

“Tenant Leases” shall mean all leases, subleases, licenses, contracts and other agreements, granting a real property interest to any other Person for the use and occupancy of all or any part of the Property, other than the Bookings.

“Title Company” shall mean Chicago Title Company.

“Title Commitment” shall mean that certain title report issued by the Title Company, dated June 10, 2009 (with an effective date of May 1, 2009) and referred to as Title Number 09-52606381Z, and attached hereto as Schedule 1.1.

“Title Policy” shall mean a standard form CLTA owner’s title insurance policy without endorsements issued by the Title Company pursuant to the Title Commitment insuring the Buyer’s title to the Property subject only to the Permitted Exceptions in an amount equal to the Purchase Price.

“Trade Payables” shall have the meaning assigned thereto in subsection 10.1(j).

“Transferred Employees” shall have the meaning assigned thereto in subsection 4.3(b).

“Transition Services Agreement” shall have the meaning assigned thereto in subsection 6.1(b)(vii).

“Uniform System of Accounts” shall have the meaning assigned thereto in subsection 2.1(b)(x).

“WARN Act” shall mean the Worker’s Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101, *et seq.*, and any similar state and local applicable law, including, without limitation, the Cal-WARN Act, as amended from time to time, and any regulations, rules and guidance issued pursuant thereto.

ARTICLE II

SALE, PURCHASE PRICE AND CLOSING

SECTION 2.1. Sale of Asset.

(a) On the Closing Date and pursuant to the terms and subject to the conditions set forth in this Agreement, the Seller shall sell to the Resort Buyer, and the Resort Buyer shall purchase from the Seller, the Asset.

(b) The transfer of the Asset to the Resort Buyer shall include the transfer of all Asset-Related Property. For purposes of this Agreement, “Asset-Related Property” shall mean the following:

(i) all of the Seller’s right, title and interest in and to all easements, covenants and other rights appurtenant to the Land, including, without limitation, all minerals, oils, gas and other hydrocarbon substances on and under the Land, as well as any development rights, air rights, water, water rights and riparian rights relating to the Land, and all of the Seller’s right, title and interest, if any, in and to any land lying in the bed of any street, road, avenue or alley, open or closed, in front of or adjoining the Land and to the center line thereof;

(ii) all furniture, furnishings, fixtures, vehicles, rugs, mats, carpeting, appliances, devices, engines, telephone and other communications equipment, televisions and other video equipment, plumbing fixtures and other equipment, and all other equipment and other personal property which are now, or may hereafter prior to the Closing Date be, placed in or on, or attached to, the Property, or which may be located offsite for any reason, but which, in each case, are used in connection with the operation of the Property (but not including items owned or leased by tenants or which are leased under the Equipment Leases by the Seller or Manager) (the “FF&E”);

(iii) to the extent transferable under applicable law, all of the Seller’s right, title and interest in and to all licenses, permits and authorizations presently issued in connection with the operation of all or any part of the Property as it is presently being operated, other than the existing Liquor License (the “Licenses and Permits”);

(iv) to the extent assignable, all of the Seller’s right, title and interest in and to all warranties, if any, issued to the Seller by any manufacturer or contractor in connection with construction or installation of equipment or any component of the improvements included as part of the Property or the FF&E;

(v) all of the Seller’s or its Affiliates’ right, title and interest in and to the Operating Agreements that are listed on Schedule 3.2(a)(ii) or that are otherwise required to be assumed by the Resort Buyer pursuant to subsection 3.4(c) (the “Assumed Operating Agreements”);

(vi) all of the Seller’s or its Affiliates’ right, title and interest in and to the Tenant Leases that are listed on Schedule 3.2(c)(ii) or that are otherwise required to be assumed by the Resort Buyer pursuant to subsection 3.4(d) (the “Assumed Tenant Leases”), together with all security and escrow deposits or other security held by or for the benefit of, or granted to the Seller in connection with, such Assumed Tenant Leases;

(vii) all of the Seller’s or its Affiliates’ right, title and interest in and to the Equipment Leases that are listed on Schedule 3.2(c)(ii) or that are otherwise

required to be assumed by the Resort Buyer pursuant to subsection 3.4(d) (the “Assumed Equipment Leases”), together with all deposits made by or on behalf of the Seller thereunder;

(viii) all of the Seller’s or its Affiliates’ right, title and interest in and to the Bookings that are listed on Schedule 3.2(f) or that are entered into in accordance with subsection 3.4(b), together with all deposits held by the Seller with respect thereto;

(ix) all of the Seller’s right, title and interest in and to all Assigned Accounts Receivable as set forth in Section 10.3;

(x) all items included within the definition of “Property and Equipment” under the Uniform System of Accounts for the Lodging Industry, Tenth Revised Edition, as published by the Hotel Association of New York City, Inc. (the “Uniform System of Accounts”) and used in the operation of the Hotel, including, without limitation, linen, china, glassware, tableware, uniforms and similar items (“Property and Equipment”);

(xi) all “Inventories” as defined in the Uniform System of Accounts and used in the operation of the Hotel, such as provisions in storerooms, refrigerators, pantries, and kitchens, beverages in wine cellars and bars, other merchandise intended for sale or resale, fuel, mechanical supplies, stationery, guest supplies, maintenance and housekeeping supplies and other expensed supplies and similar items and including all food and beverages which are located at the Hotel, or ordered for future use at the Hotel as of the Cut-Off Time, but expressly excluding any alcoholic beverages to the extent the sale or transfer of the same is not permitted under applicable law (the “Inventories”);

(xii) all merchandise located at the Hotel and held for sale to guests and customers of the Hotel, or ordered for future sale at the Hotel as of the Cut-Off Time, but not including any such merchandise owned by any tenant at the Property (“Retail Merchandise”);

(xiii) to the extent assignable, all of the Seller’s or its Affiliates’ right, title and interest in and to the domain names and web sites listed on Schedule 2.1(b)(xiii) and to all names, tradenames, trademarks, service marks, logos, and other similar proprietary rights (including, without limitation, the name “Carmel Valley Ranch” and all variations thereof), other than the Excluded IP, and all registrations or applications for registration of such rights, and all databases, customer information and software (other than software owned by the Manager), in each case, used in the operation of the Hotel (the “Intangible Property”);

(xiv) to the extent in the Seller’s or Manager’s possession or control, all surveys, architectural, consulting and engineering blueprints, plans, specifications, drawings and reports, if any, related to the Hotel, all books and

interest or obligations hereunder, shall be assigned or otherwise transferred, directly or indirectly, including by operation of law, by any party without the prior written consent of the other parties. Notwithstanding the foregoing, this Agreement and any rights, interests and obligations hereunder may be assigned by the Buyer to any of its majority-owned and controlled Affiliates, provided that (a) no such assignment shall relieve the Buyer of any of its obligations hereunder and (ii) the Buyer shall provide written notice of such assignment at least five days prior to the Closing and the Buyer will continue to remain primarily liable under this Agreement notwithstanding any such assignment.

SECTION 14.9. Further Assurances. From time to time, as and when requested by any party hereto, the other party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement. The provisions of this Section 14.9 shall survive the Closing.

SECTION 14.10. Notices. All notices, demands or requests made pursuant to, under or by virtue of this Agreement must be in writing and shall be (a) personally delivered, (b) delivered by express mail, Federal Express or other comparable overnight courier service, (c) telecopied, with telephone or written confirmation within one Business Day, or (d) mailed to the party to which the notice, demand or request is being made by certified or registered mail, postage prepaid, return receipt requested, as follows:

To the Seller:

c/o Blackstone Real Estate Acquisitions V L.L.C.
345 Park Avenue – 32nd Floor
New York, New York 10154
Attention: William J. Stein
Facsimile: (212) 583-5726

with copies thereof to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Sasan Mehrara, Esq.
Facsimile: (212) 455-2502

To the Buyer:

c/o Geolo Capital
Pier 5, The Embarcadero
Suite 102
San Francisco, California 94111

Attention: Thomas M. Gottlieb.
Facsimile: (415) 694-5801

with copies thereof to:

Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
Attention: Derek Boswell, Esq.
Facsimile: (415) 268-7522

To the Escrow Agent/Title Company:

Chicago Title Company
711 Third Avenue
New York, New York 10017
Attention: Neal J. Miranda
Facsimile: (917) 591-2689

and

Chicago Title Company
388 Market Street, Suite 1300
San Francisco, California 94111
Attention: Patricia Davisson
Facsimile: (415) 434-2176

All notices (i) shall be deemed to have been given on the date that the same shall have been delivered in accordance with the provisions of this Section 14.10 and (ii) may be given either by a party or by such party's attorneys. Any party may, from time to time, specify as its address for purposes of this Agreement any other address upon the giving of 10 days' prior notice thereof to the other parties.

SECTION 14.11. Entire Agreement. This Agreement, along with the Exhibits and Schedules hereto, contains all of the terms agreed upon between the parties hereto with respect to the subject matter hereof, and all understandings and agreements heretofore had or made among the parties hereto are merged in this Agreement which alone fully and completely expresses the agreement of the parties hereto.

SECTION 14.12. Amendments. This Agreement may not be amended, modified, supplemented or terminated, nor may any of the obligations of the Seller or the Buyer hereunder be waived, except by written agreement executed by the party or parties to be charged.

SECTION 14.13. No Waiver. No waiver by either party of any failure or refusal by the other party to comply with its obligations hereunder shall be deemed a waiver of any other

or subsequent failure or refusal to so comply.

SECTION 14.14. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of California.

SECTION 14.15. Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 14.16. Section Headings. The headings of the various Sections of this Agreement have been inserted only for purposes of convenience, are not part of this Agreement and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

SECTION 14.17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

SECTION 14.18. Acceptance of Deed. The acceptance of the Deed by the Buyer shall be deemed full compliance by the Seller of all of the Seller's obligations under this Agreement except for those obligations of the Seller which are specifically stated to survive the Closing.

SECTION 14.19. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

SECTION 14.20. Recordation. Neither this Agreement nor any memorandum or notice of this Agreement may be recorded by any party hereto without the prior written consent of the other party hereto. The provisions of this Section 14.20 shall survive the Closing or any termination of this Agreement. Except in connection with an action for specific performance in accordance with Section 12.2 above and subject to the time periods set forth in such section, the Buyer also agrees not to file any lis pendens or other instrument against the Asset in connection herewith. In furtherance of the foregoing, the Buyer (i) acknowledges that the filing of a lis pendens or other evidence of the Buyer's rights under, or the existence of, this Agreement against or encumbering the Asset, or the recording of any memorandum or notice of this Agreement, could cause significant monetary and other damages to the Seller, and (ii) hereby agrees to indemnify the Seller from and against any and all liabilities, damages, losses, costs or expenses (including, without limitation, attorneys fees and expenses) arising out of a breach of this Section 14.20. The provisions of this Section 14.20 shall survive the Closing or any termination of this Agreement.

SECTION 14.21. Waiver of Jury Trial. To the extent permitted by law, the

Seller and the Buyer hereby waive trial by jury in any action, proceeding or counterclaim brought by any party against another party on any matter arising out of or in any way connected with this Agreement. The provisions of this Section 14.21 shall survive the Closing and any termination of this Agreement.

SECTION 14.22. Time is of the Essence. The Buyer agrees that time is of the essence with respect to the obligations of the Buyer under this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

SELLER:

CARMEL VALLEY MORTGAGE BORROWER
L.L.C., a Delaware limited liability company

By: 
Name: Karen Sprogis
Title: Vice President

RESORT BUYER:

PAPACO HOLDINGS, LLC, a Delaware limited
liability company

By: _____
Name:
Title:

LIQUOR ASSETS BUYER:

GANBEI, INC., a Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

SELLER:

CARMEL VALLEY MORTGAGE BORROWER
L.L.C., a Delaware limited liability company

By: _____
Name:
Title:

RESORT BUYER:

PAPACO HOLDINGS, LLC, a Delaware limited
liability company

By: Thomas M. Gottlieb
Name: THOMAS M. Gottlieb
Title: MANAGER

LIQUOR ASSETS BUYER:

GANBEL, INC., a Delaware corporation

By: Thomas M. Gottlieb
Name: THOMAS M. Gottlieb
Title: President