

## ***RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT***

### ***INVITATION FOR BID***

#### ***Introduction:***

##### **The District**

The District is a public improvement district and a political taxing subdivision of the State of Arizona that was formed on July 19, 1999, by the governing bodies of the City of Tucson and the City of South Tucson (the "Participating Municipalities"), pursuant to Title 48, Chapter 26 of the Arizona Revised Statutes. The District is composed of the areas within the corporate boundaries of the Participating Municipalities and was established to provide a funding mechanism for the purpose of developing and redeveloping the City's downtown area, also known as "Rio Nuevo."

*Responses to this solicitation are due by 5:00 p.m. Mountain Standard Time on Monday, November 28, 2016.* Delivery of the Proposals may be made via electronic or hard copy format and should be sent to the District, the District's Financial Advisor and the District's Bond Counsel at the contact information on page 3.

#### ***Transaction Information***

The \$2,315,000\* Tax-Exempt Lease Revenue Bonds, Series 2016 (the "Series 2016 Bonds") will be issued for the purpose of financing the construction of a 2,800 square foot Greyhound bus terminal to be located at 801 E. 12<sup>th</sup> Street, Tucson, Arizona. The Series 2016 Bonds will be secured by lease payments under a 25 year lease between the District and Greyhound Lines, Inc. ("Greyhound"). The Series 2016 Bonds will not be assigned any credit ratings and no application has been made to any credit rating agency regarding ratings for the Series 2016 Bonds. No official statement will be provided for the Series 2016 Bonds and the successful Investor will be required to provide an *Investor Letter* in a form generally consistent with the form provided in Appendix D, subject to negotiation between the Investor and the District. The District is planning to close the Series 2016 Bonds in December, 2016 or January, 2017.

Selection criteria will include the Investor's proposed interest rate setting methodology, the estimated costs and/or fees required to execute the transaction, and other terms and conditions required by the Investor. It is anticipated that the final interest rate(s) will be set on or just prior to the closing.

#### ***The Leased Property***

The Leased Property will consist of a leasehold interest in the Premises to be constructed and located at 801 E. 12<sup>th</sup> Street, Tucson, Arizona.

A policy of title insurance in an aggregate amount of approximately \$2.315\* million will be in effect, insuring the Trustee's leasehold interest in the Leased Property.

\*Preliminary, subject to change.

***Sources of Payment for the Series 2016 Bonds***

Under the terms of the Trust Agreement, the Series 2016 Bonds will be payable from: (1) Lease Payments received by the Trustee from the District under the Lease, subject to termination of the Lease as provided under the Lease, (2) amounts from time to time deposited in the funds created under the Trust Agreement and investment earnings on such funds (except for any investment earnings that are required to be rebated to the United States in order to continue the exclusion of the interest represented by the Series 2016 Bonds from gross income for federal income tax purposes) and (3) any Net Proceeds from insurance coverage or condemnation awards received by the Trustee from the damage, destruction or taking of the Leased Property or portion thereof pursuant to the Lease and the Trust Agreement or from exercise by the Trustee of any remedies under the Lease and the Trust Agreement upon default thereunder.

The District will be required under the Lease to make Lease Payments semiannually in amounts sufficient to make interest and principal payments represented by the Series 2016 Bonds on July 1, 2017, and each January 1 and July 1 thereafter. The Series 2016 Bonds are payable from a pledge of, and secured by a lien on, the Lease Revenues received by the District. Said pledge of, and said lien on, the Lease Revenues is hereby irrevocably made and created by the District for the prompt and punctual payment of principal and interest due on the Series 2016 Bonds according to their terms.

***Security for the Series 2016 Bonds***

The Series 2016 Bonds will be payable from Lease Payments under the Lease and pledge pursuant to the Trust Agreement. The initial term of the Lease will be for a period of 25 years commencing on the Rent Commencement Date. If the District does not receive funds sufficient to pay Lease Payments in any succeeding Fiscal Period, the Lease will terminate as of the last day of the Fiscal Period for which Lease Payments were made, and Greyhound and the District will be required to vacate and return possession of the Leased Property to the Trustee, all in accordance with and subject to the terms of the Lease and the Trust Agreement and pledge pursuant to the Trust Agreement. The Series 2016 Bonds are further secured by a Deed of Trust and Assignment of Rents to the Trustee

**The Series 2016 Bonds will not constitute a debt or liability of the District, the State or any political subdivision thereof within the meaning of any constitutional or statutory limitation. Neither the faith and credit nor the taxing power of the District, the State or any political subdivision thereof will be pledged to pay the principal or interest evidenced by the Series 2016 Bonds. Payments with respect to the Series 2016 Bonds will be made solely from amounts derived under the terms of the Lease, including the Lease Payments, and available amounts from time to time on deposit under the terms of the Trust Agreement. No other funds will be pledged by the District to pay the Series 2016 Bonds.**

***Debt Service Reserve Fund***

A debt service reserve fund will be established pursuant to the Trust Agreement for payment of amounts related to the Series 2016 Bonds.

***Audit and Budget Links:***

Links for the following information are provided below:

- Audited Financial Statements - <http://rionuevo.org/audits/financial-audits/>
- Budget Documents - <http://rionuevo.org/audits/financial/>

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***APPENDIX A -***  
*Preliminary amortization schedule\**

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***APPENDIX B -***  
*2016 Trust Agreement\**

***APPENDIX C -***  
*Lease By and Between Rio Nuevo*  
*and Greyhound Lines, Inc.*

***APPENDIX D -***  
*Form of Investor Letter\**

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*\*Preliminary, subject to change*

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***REQUIRED SUBMITAL INFORMATION:***

1. Proposed interest rate setting methodology for the Series 2016 Bonds. See Appendix A for the preliminary amortization schedule. Please also include pricing details for any rate lock options, or other amortization structure proposals;
2. A detailed listing of any additional fees, expenses and/or closing costs;
3. Anticipated financial reporting and disclosure;
4. Timing for investor due diligence and final credit approval if not completed; and
5. Any other information, requirements, terms or conditions pertinent to the transaction.

*The District reserves the right to reject any and all proposals from this solicitation and pursue other financing alternatives.*

Please address questions to:

**Rio Nuevo District**

Dan Myers  
Rio Nuevo District  
400 West Congress  
Suite 152  
Tucson, AZ  
520.419.4862

**Financial Advisor**

William Davis  
Piper Jaffray & Co.  
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Phoenix, AZ 85016  
602.808.5428

**Bond Counsel**

Tim Stratton  
Gust Rosenfeld P.L.C.  
One E Washington  
Suite 2700  
Phoenix, AZ 85004  
602.257.7465

***APPENDIX A******PRELIMINARY AMORTIZATION SCHEDULE***

<b>Maturity Date</b>	<b>Principal or Sinking Fund Amount</b>
7/1/2017	\$100,000
7/1/2018	190,000
7/1/2019	195,000
7/1/2020	205,000
7/1/2021	210,000
7/1/2022	215,000
7/1/2023	225,000
7/1/2024	230,000
7/1/2025	240,000
7/1/2026	250,000
7/1/2027	255,000

*APPENDIX B*

*2016 TRUST AGREEMENT*

# **TRUST AGREEMENT**

between

**RIO NUEVO MULTIPURPOSE  
FACILITIES DISTRICT,**

AND

\_\_\_\_\_,  
as Trustee

Dated as of \_\_\_\_\_, 2016

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## TRUST AGREEMENT

This **TRUST AGREEMENT**, dated as of \_\_\_\_\_, 2016 (this "*Trust Agreement*"), between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, a special district authorized under the laws of the State of Arizona (the "*District*") and \_\_\_\_\_, authorized to exercise corporate trust powers in the State of Arizona, as trustee as well as any successor thereto as provided herein (the "*Trustee*");

### WITNESSETH:

**WHEREAS**, the District has determined that it will be beneficial to the District to finance, design, construct and lease a mass transit commuting bus terminal and depot ("*Mass Commuting Facility*") facility (the "*Special Facility*") primarily located on a certain Project Site (the "*Project Site*"); and

**WHEREAS**, in order to finance the costs of financing, designing and constructing the Special Facility, the District deems it necessary and desirable for the District to issue its \$2,000,000 aggregate principal amount of Lease Revenue Bonds, Series 2016 (Greyhound Project) (the "*Series 2016 Bonds*"); and

**WHEREAS**, Greyhound Lines, Inc. ("*Greyhound*") desires to lease the Project Site and the Special Facility from the District; and

**WHEREAS**, in connection with the issuance of the Series 2016 Bonds, the District and Greyhound have entered into (i) a Lease Agreement, dated the date hereof, pursuant to which (A) the District shall lease the Project Site and the Special Facility to Greyhound and (B) Greyhound shall lease the Project Site and the Special Facility from the District, and the District has entered into this Trust Agreement, which Greyhound has joined in for certain purposes; and

**WHEREAS**, the Bonds (as such term and all other capitalized terms hereinafter used are defined in Section 1.01 hereof) shall be secured by this Trust Agreement, and the District is authorized to execute and deliver this Trust Agreement and to do, or cause to be done, all acts provided or required herein to be performed on its part; and

**WHEREAS**, all acts and conditions required to happen, exist and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Trust Agreement have happened, exist and have been performed, or at the delivery of the Bonds shall exist, shall have happened and shall have been performed (i) to make the Bonds, when issued, delivered and authenticated, valid Bonds of the District in accordance with the terms thereof and hereof and (ii) to make this Trust Agreement a valid, binding and legal trust agreement for the security of the Bonds; and

**WHEREAS**, the Trustee has accepted the trusts created by this Trust Agreement and in evidence thereof has joined in the execution hereof;

**NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH**, that to secure the payment of Bond Service Charges on the Bonds according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Owners, and for other good and valuable consideration, the receipt of which is acknowledged, the District has executed and delivered this Trust Agreement and absolutely pledges and assigns hereby to the Trustee, and to its successors in trust, and its and their assigns, all right, title and interest of the District in and to (i) the right, title and interest of the District in and to the Lease, the District, however, to remain liable to observe and perform all of the conditions and covenants in the Lease provided to be observed and performed by it; (ii) all of the rents, issues and profits payable to or received by the District under the Lease described in paragraph (i) above, including without limitation, all of the Lease Revenues, which include without limitation the Rent; and (iii) all property which is by the express provisions hereof required to be subjected to the lien hereof, including but not limited to any additional property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof, by the District or by anyone in its behalf, and the Trustee is hereby authorized to receive the same at any time as additional security hereunder,

**TO HAVE AND TO HOLD** unto the Trustee and its successors in that trust and its and their assigns forever;

**BUT IN TRUST, NEVERTHELESS**, and subject to the provisions hereof,

(a) for the equal and proportionate benefit, security and protection of all present and future Owners of the Bonds issued or to be issued under and/or secured by this Trust Agreement,

(b) for the enforcement of the payment of the principal of and interest and any premium on the Bonds, when payable, according to the true intent and meaning thereof and of this Trust Agreement, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Trust Agreement, in each case, without preference, priority or distinction, as to lien or otherwise, of any one Bond over any other by reason of series designation, number or date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that, except as otherwise provided herein, each series and each Bond of a series and all Bonds of a series shall have the same right, lien and privilege under this Trust Agreement except as permitted by Section 2.04(b), and shall be secured equally and ratably hereby, it being intended that the lien and security hereof shall take effect from the date hereof, without regard to the date of actual issue, sale or disposition of the Bonds, as though upon the date hereof all of the Bonds were

actually issued, sold and delivered to purchasers for value; provided, however, that if (i) the principal of the Bonds and the interest due or to become due thereon, together with any premium required by redemption of any of the Bonds prior to maturity, shall be well and truly paid, at all times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the outstanding Bonds shall have been paid and discharged in accordance with Article X hereof, and (ii) all of the covenants, agreements, obligations, terms and conditions of the District under this Trust Agreement shall have been kept, performed and observed, and there shall have been paid to the Trustee, the Registrar and the Paying Agents all sums of money due or to become due to them in accordance with the terms and provisions hereof, then this Trust Agreement and the rights assigned hereby shall cease, determine and be void, except as provided in Section 10.03 hereof with respect to the survival of certain provisions; otherwise, this Trust Agreement shall be and remain in full force and effect.

It is declared that all Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that all Lease Revenues pledged and assigned hereby are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided herein. The District has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Owners, as follows:

## ARTICLE I

### DEFINITIONS

**SECTION 1.01. Definitions.** In addition to the words and terms defined elsewhere in this Trust Agreement, unless the context or use clearly indicates another meaning or intent, the following terms shall have the meanings provided thereafter:

*"Acquisition and Construction Fund"* means the Acquisition and Construction Fund established pursuant to Section 5.01 hereof.

*"Additional Bonds"* means any bonds which may be issued under Section 2.04 hereof.

*"Board of Directors"* means the Board of Directors of the District.

*"Bond Payment Date"* means any Principal Payment Date or Interest Payment Date.

*"Bond Owner"* shall have the same meaning as "Owner" herein.

*"Bond Register"* means the register of ownership of the Bonds maintained by the Registrar.

*"Bond Resolution"* means (a) when used with reference to the Series 2016 Bonds, the resolution of the Board of Directors providing for their issuance and the approving of the

Lease, this Trust Agreement and related matters; (b) when used with reference to an issue of Additional Bonds, the resolution of the Board of Directors providing for the issuance of the Additional Bonds, to the extent applicable, and the approving of any amendment or supplement to the Lease, any Supplement and related matters; and (c) when used with reference to Bonds when any Bonds are outstanding and are to be refunded, the resolution providing for the issuance of the refunding Bonds, in each case as amended or supplemented from time to time.

"Bond Retirement Fund" means the Bond Retirement Fund established pursuant to Section 5.01 hereof comprised of the Interest Account and the Principal Account.

"Bond Service Charges" means, for any period or time, the principal of and interest and any premium due on the Bonds for that period or payable at that time, as the case may be.

"Bonds" means the Series 2016 Bonds and any Additional Bonds.

"Book-Entry Form" or "Book-Entry System" means, as to the Bonds, a form or system, as applicable, under which (i) physical Bond certificates in fully registered form are issued only to a Depository or its nominee as Owner, with the physical Bond certificates "immobilized" in the custody of, or on behalf of, the Depository, and (ii) the ownership of book-entry interests in Bonds and principal of, premium, if any, and interest thereon may be transferred only through a book-entry made by other than the District or the Trustee or the Registrar. The records maintained by entities other than the District or the Trustee or the Registrar constitute the written record that identifies the owners, and records the transfer, of book-entry interests in those Bonds and principal of, premium, if any, and interest thereon.

"Book-Entry Bonds" means all Bonds issued pursuant to the Book-Entry System provisions of Section 3.01(e) hereof.

"Business Day" means any day of the week other than (a) a Saturday or Sunday or a day which shall be in the State a legal holiday, (b) a day on which the Trustee is authorized or obligated by law or executive order to close, or (c) a day on which the New York Stock Exchange or the Depository is closed.

"Chair" means the Chair of the Board of Directors of the District.

"Closing Date" means the day when the Series 2016 Bonds, duly authenticated by the Trustee, are initially delivered to the Original Purchaser.

"Code" means the Internal Revenue Code of 1986, as amended. References to the Code and Sections thereof include relevant applicable regulations and proposed regulations thereunder and any successor provisions to those Sections, regulations or proposed regulations.

"Costs of Acquisition" means all items of expense directly or indirectly relating to the cost of financing, designing, constructing, leasing and subleasing the Special Facility, including, but not limited to, the following:

(a) Costs incurred by the District in connection with the financing, designing, constructing, leasing and subleasing of the Special Facility.

(b) Fees paid by the District for legal, engineering, consulting and supervisory services with respect to the financing, designing, constructing, leasing and subleasing the Special Facility.

(c) Expenses incurred by the District in seeking to enforce any remedy concerning a contract relating to financing, designing, constructing, leasing and subleasing the Special Facility.

(d) Any sums required to reimburse the District for advances made by it for any of the above items.

"Debt Service on the Bonds" means with respect to a series of Bonds, as of any date of calculation and with respect to any period, the sum of (1) the interest falling due during such period (except to the extent that such interest is payable from proceeds of the Bonds or other amounts set aside for such purpose at the time such Bonds are issued), and (2) the principal (or mandatory sinking fund or installment purchase price or lease rental or similar) payments or deposits required with respect to such Bonds during such period; such sum to be computed on the assumption that no portion of such Bonds shall cease to be Outstanding during such period except by reason of the application of such scheduled payments. If interest on a series of Bonds is payable pursuant to a variable interest rate formula, the interest rate on such Bonds for periods when the actual interest rate on such Bonds cannot yet be determined shall be assumed to be equal to whichever of the following is the highest:

(A) the average annual interest rate on such Bonds over the last five Fiscal Years or since the date of issuance of such Bonds if less than five years, or

(B) if the terms of such Bonds provide for conversion of the interest rate payable on such Bonds to a fixed interest rate for the remainder of their term to maturity, an interest rate per annum determined in accordance with the provisions of such Bonds as if the interest rate payable thereon were being converted to a fixed interest rate for the remainder of their term to maturity.

Debt Service shall not be based upon the terms of any reimbursement obligation to the issuer of any liquidity or credit facility except to the extent and for the periods during which payments are required to be made pursuant to such reimbursement obligation as a result of the issuer's unreimbursed advances of funds thereunder.

"Defeasance Obligations" mean, subject to applicable law:

(1) Cash (legal tender of the United States of America);

(2) Direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed to timely payment of principal and interest by the



United States of America to which direct obligation the full faith and credit of the United States of America has been pledged ("Government Obligations");

(3) STRIPS;

(4) municipal obligations rated by S&P and by Moody's not lower than the rating assigned to direct obligations of the United States of America and meeting the following requirements:

(i) the municipal obligations are not subject to redemption prior to maturity or (ii) the trustee therefor has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

(ii) the municipal obligations are secured by cash or Government Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

(iii) the principal of and interest on the Government Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification");

(iv) the cash or Government Obligations serving as security for the municipal Bonds are held by an escrow agent or trustee in trust for owners of the municipal Bonds;

(v) no substitution of the Government Obligations shall be permitted except with another Government Obligation and upon delivery of a new verification and if a forward supply contract exists with respect to such municipal obligations, the Verification does not assume compliance with the forward supply contract; and

(vi) the cash or Government Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent, and

(5) Any combination of the items listed in subparagraphs (1) through (4) above.

"Delivery Costs" means all items of expense directly or indirectly payable by or reimbursable to the Trustee or the District relating to the execution, sale and delivery of this Trust Agreement, the Lease or the Bonds, including but not limited to, filing and recording costs, settlement costs, appraisals, surveys, environmental surveys, title insurance, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, the Registrar, the Paying Agents, financing discounts, legal fees and charges, fees and charges for other credit enhancement for the Bonds, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Bonds and

charges and fees in connection with the foregoing, and all the District fees, taxes, development fees and charges customarily levied on the District for similar projects.

"Depository" means, if the Bonds are in Book-Entry Form, Cede & Co. until a successor Depository shall have become such pursuant to the applicable provisions of this Trust Agreement and, thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of beneficial interests in Bonds or principal of, premium, if any, and interest thereon, and to effect transfers of Bonds, in Book-Entry Form.

"Determination of Taxability" means a Final Determination by the Internal Revenue Service or by a court of competent jurisdiction in the United States that, or an opinion of Bond Counsel to the effect that the interest payable on any Series 2016 Bond is or will become includable in the gross income of the owner thereof for federal income tax purposes (other than an owner who is a "substantial user" or "related person" within the meaning of Section 147(a) of the Code).

"District" means the Rio Nuevo Multipurpose Facilities District, a special district pursuant to Title 48, Chapter 26, Arizona Revised Statutes, as enacted and amended from time to time.

"District Representative" means the Chair, Secretary or Treasurer of the Board of Directors, or such other persons designated by the Chair, Secretary or Treasurer of the Board of Directors to act on behalf of the District by a certificate filed with the Trustee containing the specimen signature of such person signed by the Chair, Secretary or Treasurer of the Board of Directors.

"Eligible Investments" means any of the following, subject to applicable law:

1. Direct general obligations of, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by, the United States of America (including, without limitation, the interest portion of obligations issued by the Resolution Funding Corporation in book entry form and stripped by request to the Federal Reserve Bank of New York), including Government Bonds which have been stripped of their unmatured interest coupons and interest coupons stripped from Government Bonds, provided any stripped Government Bonds have been stripped by the applicable U.S. Governmental Agency ("Government Bonds").

2. STRIPS.

3. Advance-refunded municipal obligations.

4. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): U.S. Export-Import Bank (Eximbank) - direct

obligations or fully guaranteed certificates of beneficial ownership; Farmers Home Administration (FmHA) - certificates of beneficial ownership; Federal Financing Bank; Federal Housing Administration Debentures (FHA); General Services Administration - participation certificates; Government National Mortgage Association (GNMA or "Ginnie Mae") GNMA - guaranteed mortgage-backed bonds and GNMA - guaranteed pass-through obligations; U.S. Maritime Administration - guaranteed Title XI financing; U.S. Department of Housing and Urban Development (HUD) - project notes, local District bonds, new communities debentures U.S. Government guaranteed debentures, U.S. Public Housing notes and bonds - U. S. Government guaranteed public housing notes and bonds.

5. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): Federal Home Loan Bank System - senior debt obligations; Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac") - participation certificates and senior debt obligations; Federal National Mortgage Association (FNMA or "Fannie Mae") - mortgage-backed securities and senior debt obligations; Student Loan Marketing Association (SLMA or Sallie Mae) - senior debt obligations; Resolution Funding Corp. (REFCORP) obligations; and Farm Credit System - consolidated systemwide bonds and notes.

6. Money market funds registered under the Federal Investment Company Act of 1940, or whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AA-Am-G, AAA-m, or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2 including, without limitation, those of which an affiliate of the Trustee acts as a manager or an investment advisor;

7. Certificates of deposit (i) secured at all times by collateral described in (1), (2), (3) or (4) above, (ii) issued by commercial banks, savings and loan associations or mutual savings banks and (iii) the collateral must be held by a third party and the Trustee must have a perfected first security interest in the collateral;

8. Certificates of deposit, savings accounts, deposit accounts or money market deposits in amounts that are continuously and fully insured by the Federal Deposit Insurance District ("FDIC"), including the Bank Insurance Fund and the Savings Association Insurance Fund.

9. investment agreements, including guaranteed investment contracts, which meet the following criteria:

(i) the investment agreement must be collateralized by the transfer of qualifying securities from a dealer bank or securities firm to the Trustee;

(ii) the investment agreement must be between the Trustee and a provider which is rated "A" or better by S&P and Moody's;

(iii) the written investment agreement must include the following:  
(A) securities which are acceptable for collateral are Government Bonds, or

Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC); (B) the collateral must be delivered to the Trustee (if Trustee is not supplying the collateral) or third party acting as agent for the Trustee (if the Trustee is supplying the collateral provided to it by the District) before/simultaneous with payment (perfection by possession of certificated securities); (C) the securities must be valued weekly, marked-to-market at current market price plus accrued interest and the value of collateral must be equal to at least 103% of the amount invested by the Trustee under the investment agreement plus accrued interest and if the value of securities held as collateral slips below 103% of the required value, then additional cash and/or acceptable securities must be transferred, provided however, if the securities used as collateral are FNMA or FHLMC then the value of collateral must equal at least 104%; and

(iv) a legal opinion must be delivered to the Trustee that the investment agreement meets guidelines under state law for legal investment of public funds;

10. Commercial paper rated, at the time of purchase, "P-1" by Moody's and "A-1" or better by S&P.

11. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies;

12. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of Prime-1 or "A3" or better by Moody's and "A-1" or "A" or better by S&P;

13. repurchase agreements which meet the following criteria:

(i) the repurchase agreement (the "repo") must provide for the transfer of securities from a dealer bank or securities firm to the Trustee, and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee in exchange for the securities at a specified date;

(ii) repo must be between the Trustee and a dealer bank or securities firm which is either a primary dealer on the Federal Reserve reporting dealer list which is rated "A" or better by S&P and Moody's, or a bank rated "A" or above by S&P and Moody's;

(iii) the written repo contract must include the following: (A) securities which are acceptable for transfer are Government Bonds, or Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC); (B) the collateral must be delivered to the Trustee (if Trustee is not supplying the collateral) or third party acting as agent for the Trustee (if the Trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities); (C) the securities must be valued weekly, marked-to-market at current market price plus accrued interest and the value of

collateral must be equal to at least 103% of the amount of cash transferred by the Trustee to the counter-party under the repo plus accrued interest and if the value of securities held as collateral slips below 103% of the value of the cash transferred by Trustee, then additional cash and/or acceptable securities must be transferred, provided however, if the securities used as collateral are FNMA or FHLMC then the value of collateral must equal at least 104%; and

(iv) legal opinion which must be delivered to the Trustee that the repo meets guidelines under state law for legal investment of public funds;

14. any other investment that is permitted under applicable Arizona law.

Notwithstanding the foregoing, moneys derived from the sale of the Bonds shall be invested only in obligations described in (1), (2), (4) or (7) (other than certificates of deposit with a savings and loan association or mutual savings bank as described in (7)) or in (6), (9) or (14) (where such investment described in (6), (9) or (14) consists solely of, or are secured by, obligations described in (1), (2), (4) or (7) (other than certificates of deposit with a savings and loan association or mutual savings bank as described in (7))) or in (13).

If any security or Eligible Investment for which a rating level is required is on "credit watch," "negative outlook" or similar status indicating a possible reduction in rating, it shall be treated as not having the rating required.

"Event of Bankruptcy" means the filing of a petition in bankruptcy by or against the specified Person under the United States Bankruptcy Code.

"Event of Default" means an event of default as defined in Section 8.01 of this Trust Agreement.

"Extraordinary Services" and "Extraordinary Expenses" mean all services rendered, and all reasonable expenses properly incurred, by the Trustee under this Trust Agreement, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall include, without limitation, all services rendered and all expenses incurred in connection with an Event of Default.

"Final Determination" means, with respect to a private letter ruling or a technical advice memorandum or determination of the Internal Revenue Service, written notice thereof in a proceeding in which the District had an opportunity to participate and otherwise means written notice of a determination from which no further right of appeal exists or from which no appeal is timely filed with any court of competent jurisdiction in the United States in a proceeding to which the District were a party or in which the District had the opportunity to participate.

"Fiscal Year" means the period commencing each July 1 and ending June 30 of the succeeding calendar year, unless otherwise determined and designated by the District.

"Greyhound" means Greyhound Lines, Inc., a Delaware corporation.

"Interest Account" means the Interest Account established pursuant to Section 5.01 hereof.

"Interest Payment Date" or "Interest Payment Dates" means, as to the Series 2016 Bonds, the date or dates set forth as such in the form of bond attached hereto as Exhibit A, and as to Additional Bonds, each date or dates designated as an Interest Payment Date or Dates in the form of bond for which provision is made in the applicable Supplement or Bond Resolution.

"Lease" means the Triple Net Build-To-Suit Expansion Real Estate Lease dated as of the 1st day of June, 2016, by and between the District, as lessor and Greyhound, as lessee, as amended or supplemented from time to time.

"Lease Revenues" means (a) Rent (b) all other moneys received or to be received by the District or the Trustee in respect of the Lease and any amendment or supplement to the Lease, including without limitation, moneys and investments in the Bond Retirement Fund, and (d) all income and profit from the investment of the foregoing moneys.

"Lessee" means the Greyhound.

"Mass Commuting Facility" means real property together with improvements, and personal property used in the facility, such as machinery, equipment, and furniture, serving the general public commuting on a day-to-day basis. Such property also includes terminals and facilities functionally related and subordinate to the Mass Commuting Facility, such as parking garages, car barns and repair shops. Use of a Mass Commuting Facility by noncommuters in common with commuters is immaterial to the use as a Mass Commuting Facility.

"Ordinary Services" and "Ordinary Expenses" mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to this Trust Agreement.

"Original Purchaser" means, as to the Series 2016 Bonds, \_\_\_\_\_ and, as to Additional Bonds, the Person or Persons identified as the purchaser or purchasers in the applicable purchase agreement or purchase proposal.

"Outstanding Bonds," "Bonds outstanding" or "Outstanding" as applied to the Bonds, mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Trust Agreement, except:

(a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment or redemption on or prior to that date;

(b) Bonds, or the portion thereof, for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited and credited with the Trustee or any Paying Agents on or prior to that date for that purpose (whether upon or prior to the maturity or redemption date of those Bonds); provided, that if any of those Bonds are to be redeemed prior to their maturity, notice of that redemption shall have been given or

arrangements satisfactory to the Trustee shall have been made for giving notice of that redemption, or waiver by the affected Owners of that notice satisfactory in form to the Trustee shall have been filed with the Trustee;

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of this Trust Agreement; and

(d) Bonds in lieu of which others have been authenticated under Section 3.07 hereof.

"Owner" or "Bond Owner" or "Owner of a Bond" means the Person in whose name a Bond is registered on the bond register.

"Paying Agent" means, as to the Series 2016 Bonds, the Trustee, until a successor Paying Agent shall have become such pursuant to applicable provisions of this Trust Agreement and, as to any series of Additional Bonds, the bank, trust company or other person designated as a Paying Agent by or in accordance with Section 7.12 hereof.

"Payment Request Form" means the form set forth in Exhibit B which is attached hereto and made a part hereof.

"Person" or words importing persons means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, authorities, public or governmental bodies, other legal entities and natural persons.

"Predecessor Bond" of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 3.07 hereof in lieu of a lost, wrongfully taken or destroyed Bond shall, except as otherwise provided in Section 3.07, be deemed to evidence the same debt as the lost, wrongfully taken or destroyed Bond.

"Prepayment" means any prepayments made pursuant to the Lease.

"Principal Account" means the Principal Account established pursuant to Section 5.01 hereof.

"Principal Payment Date" means, as to the Series 2016 Bonds, July 1 in the years specified in Section 2.02 hereof for the stated amount of principal to be retired at maturity, or any other date on which the principal of the Series 2016 Bonds is payable as a result of redemption, optional or mandatory and as to Additional Bonds such date or dates in the years designated as Principal Payment Dates in the form of bond for which provision is made in the applicable Supplement.

"Project Site" means the necessary property, rights-of-way, easements and other property rights, if and to the extent necessary, to construct, operate, use and maintain the Special

Facility and the related appurtenances thereto, including but not limited to, access to runways and taxiway connectors. The Project Site shall also include a parking apron approximately 1.5 times the size of the Special Facility's maintenance hangar space immediately adjacent to the Special Facility.

"Qualified Surety Issuer" means with respect to the Series 2016 Bonds and any Additional Bonds, the issuer of a Qualified Surety Bond, if any.

"Qualified Surety Bond" means a letter of credit or line of credit, insurance policy or surety bond issued by a Qualified Surety Issuer meeting the requirements of Section 5.06(d) hereof.

"Registrar" means, as to the Series 2016 Bonds, the Trustee, until a successor Registrar shall have become such pursuant to applicable provisions of this Trust Agreement and as to any series of Additional Bonds, the bank, trust company or other Person designated as such by or pursuant to the applicable Bond Resolution or Supplement.

"Regular Record Date" means the fifteenth (15th) day of the calendar month next preceding an Interest Payment Date applicable to that Bond, whether or not such fifteenth (15) day is a Business Day.

"Reimbursement Request Form" means the form set forth in Exhibit C which is attached hereto and made a part hereof.

"Rent" means the amount Greyhound will pay the District under the Lease for use of the Special Facility together with (i) any and all amounts necessary to cause redemption of the Series 2016 Bonds, (ii) all fees and expenses of the Trustee and the registrar and paying agents under the Trust Agreement, to the extent, if any, that such fees, expenses and payments are not met by the regular annual rental payments for use of the Special Facility, (iii) reserve fund payments due under the Trust Agreement, and (iv) any interest on overdue amounts.

"Rental Payments" means the Rent to be made by Greyhound under the Lease which is assigned by the District to the Trustee by this Trust Agreement.

"Reserve Fund" means the Reserve Fund established pursuant to Section 5.01 hereof.

"Reserve Requirement" means, as to all of the Series 2016 Bonds, \$ \_\_\_\_\_ and upon the issuance of any Additional Bonds, the Reserve Requirement shall increase to the least of an amount equal to the Debt Service on the Bonds for the then Outstanding Bonds, 125% of the average Debt Service on the Bonds for the then Outstanding Bonds, and ten percent (10%) of the stated principal amount of the then Outstanding Bonds, provided however, that the incremental increase of the Reserve Requirement with respect to an issue of Additional Bonds does not exceed 10% of the stated principal amount of such issue. The Reserve Requirement may be satisfied by cash, a Qualified Surety Bond, or a combination of the two.



"Responsible Officer" means, when used with respect to the Trustee, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer or any other officer of the Trustee within the corporate trust office set forth in Section 12.02(a)(iv) hereof (the "Corporate Trust Office") (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person's knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Trust Agreement.

"Secretary" means the Secretary of the Board of Directors of the District.

"Series 2016 Bonds" means the Rio Nuevo Multipurpose Facilities District Lease Revenue Bonds, Series 2016 (Greyhound Project), issued pursuant to this Trust Agreement.

"Special Facility" means the Mass Commuting Facility which shall be comprised of a building of an approximately 2,800 square foot bus terminal and associated parking areas. The Special Facility shall be connected to public utilities, roadways, private utilities and taxiways.

"Special Record Date" means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to Section 3.05 hereof.

"State" means the State of Arizona.

"Supplement" means any trust agreement supplemental to this Trust Agreement entered into between the District and the Trustee in accordance with Article IX hereof.

"Trust Agreement" means this Trust Agreement, dated as of \_\_\_\_\_, 2016, between the District and the Trustee, as amended or supplemented from time to time.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Trust Agreement, and thereafter "Trustee" shall mean such successor Trustee.

## **SECTION 1.02. Interpretation.**

(a) Any reference herein to the District, to the Board of Directors or to any member or officer of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

(b) Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Arizona Revised Statutes, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified,

revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the District, the Owners, the Trustee, the Paying Agent, the Registrar or the District under this Trust Agreement, the Bond Resolution, the Bonds, the Lease or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the requirement to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the related Bond Resolution and this Trust Agreement, except as permitted herein.

(c) Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Trust Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of this Trust Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

**SECTION 1.03. Captions and Headings.** The captions and headings in this Trust Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

## **ARTICLE II**

### **AUTHORIZATION AND TERMS OF SERIES 2016 BONDS; ADDITIONAL BONDS**

**SECTION 2.01. Authorized Bonds and Amount of Series 2016 Bonds.** No Bonds may be issued hereunder except in accordance with this Article. The total authorized principal amount of Series 2016 Bonds which shall be issued under the provisions of this Trust Agreement is \$2,000,000. The District may issue, sell and deliver one or more series of Additional Bonds for the purposes, upon satisfaction of the conditions and in the manner provided herein.

**SECTION 2.02. Issuance of Series 2016 Bonds.** It is determined to be necessary to, and the District shall, issue, sell and deliver \$2,000,000 aggregate principal amount of "*Rio Nuevo Multipurpose Facilities District Lease Revenue Bonds, Series 2016 (Greyhound Project)*." The Series 2016 Bonds shall be issuable either as fully registered Book-Entry Form Bonds, or registered in the name of the Purchaser, substantially as set forth in Exhibit A hereto; shall mature and bear interest as follows:

Maturity Date (July 1)	Principal Amount	Interest Rate	Maturity Date (July 1)	Principal Amount	Interest Rate

\* Term bond

The Series 2016 Bonds shall be numbered in such manner as determined by the Trustee in order to distinguish each Series 2016 Bond from any other Bond; shall be in the denominations of \$5,000 and any integral multiple thereof; shall be dated as of the date of their initial issuance; and shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date, until paid. Interest shall be payable semiannually on July 1 and January 1 of each year, commencing July 1, 20\_\_ at the rates set forth above (on the basis of a 360-day year of twelve 30-day months).

### **SECTION 2.03. Delivery of Series 2016 Bonds.**

(a) Upon the execution and delivery hereof, and satisfaction of the conditions established by the District for delivery of the Series 2016 Bonds, the District shall execute the Series 2016 Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the Series 2016 Bonds and deliver them to, or on the order of, the Original Purchaser thereof, as directed by the District in accordance with this Section 2.03.

(b) Prior to delivery by the Trustee of any Series 2016 Bonds, there shall have been received by the Trustee a request and authorization to the Trustee on behalf of the District, signed by the Chair or the Secretary, to authenticate and deliver the Series 2016 Bonds to, or on the order of, the Original Purchaser upon payment to the Trustee of the amounts specified therein (including without limitation, any accrued interest), which amounts shall be deposited as provided in Article V hereof.

### **SECTION 2.04. Issuance and Delivery of Additional Bonds.**

(a) The District may issue Additional Bonds from time to time for any purpose permitted herein. The Series 2016 Bonds are not considered Additional Bonds for any purpose of this Trust Agreement.

(b) Additional Bonds shall be on a parity with the Series 2016 Bonds and any Additional Bonds hereafter issued and then outstanding, as to the assignment to the Trustee of the right, title and interest of the District in the Lease and moneys in the accounts of the funds created hereby; provided, that nothing herein shall prevent payment of Bond Service Charges on any series of Additional Bonds from (i) being otherwise secured and protected from sources or

by property or instruments not applicable to the Series 2016 Bonds and any one or more series of Additional Bonds or (ii) not being secured or protected from sources or by property or instruments applicable to the Series 2016 Bonds or one or more series of Additional Bonds.

(c) The issuance of such Additional Bonds is subject to the following specific conditions which are hereby made conditions precedent to the issuance of such Additional Bonds:

(i) such Additional Bonds shall have been authorized to finance or refinance the cost of acquiring, constructing, reconstructing or improving buildings, equipment, and other real and personal properties as a Mass Commuting Facility or other mass transit related activities by and for leasing to Greyhound or its agencies or instrumentalities provided that such financing or refinancing is related to the Special Facility, or for refinancing or advance refunding of Bonds and the issuance thereof as shall have been determined and declared by the District, by appropriate resolution, to be necessary for that purpose;

(ii) the District shall be in compliance with all covenants and undertakings set forth in the Lease and in this Trust Agreement, including this Section 2.04, as either or both may have been amended or supplemented;

(iii) the supplement to this Trust Agreement authorizing issuance of such Additional Bonds shall require that the proceeds of the sale thereof shall be applied solely for one or more of the purposes set forth in clause (i) of this subsection (c) and expenses and costs incidental thereto, including costs and expenses incident to the issuance and sale of such Additional Bonds and the costs of any premium relating to any insurance policy on the Additional Bonds, or any Qualified Surety Bond or funding any increase in the Reserve Fund due to the issuance of the Additional Bonds and interest on said Additional Bonds during the actual period of any acquisition, construction or improvement of the real and personal properties leased to Greyhound and for a reasonable period of time thereafter;

(iv) the Reserve Fund be increased as necessary to equal the Reserve Requirement applicable after issuance of the Additional Bonds;

(v) evidence of compliance with Section 5.6 of the Lease regarding Parity Subordinate Lien Obligations;

(vi) the supplement to the Lease providing for Rent in amounts sufficient to pay the Additional Bonds;

(vii) the purpose of the Additional Bonds must be in compliance with Title 28, Chapter 25, Article 8 of the Arizona Revised Statutes, as amended;

(viii) the purpose of the Additional Bonds must be in compliance with federal tax law requirements to operate a type of facility that constitutes a Mass Commuting Facility;

(ix) the obligation to make payments on the Additional Bonds from Lease Revenues shall not be subject to acceleration for any reason and such payments shall not be made immediately due and payable prior to their scheduled due date;

(x) before the Trustee shall authenticate and deliver any Additional Bonds, the following items shall have been received by the Trustee:

(A) Original executed counterparts of any amendments or supplements to the Lease and this Trust Agreement entered into in connection with the issuance of the Additional Bonds, which are necessary or advisable, in the opinion of nationally recognized bond counsel, to provide that the Additional Bonds will be issued in compliance with the provisions of this Trust Agreement and to increase the amount of the Rent due under the Lease to pay the additional debt service requirements for the Additional Bonds.

(B) A copy of the Bond Resolution, certified by the Chair or the Secretary.

(C) A request and authorization to the Trustee on behalf of the District, signed by the Chair or the Secretary, to authenticate and deliver the Additional Bonds to, or on the order of, the Original Purchaser thereof upon payment to the Trustee of the amount specified therein (including without limitation, any accrued interest and any reserve requirement, which amount shall be deposited as provided in the applicable Bond Resolution or Supplement).

(D) The written opinion of counsel, who may be counsel for the District to the effect that: (1) the documents submitted to the Trustee in connection with the request then being made comply with the requirements hereof; (2) the issuance of the Additional Bonds has been duly authorized; and (3) all conditions precedent to the delivery of the Additional Bonds have been fulfilled.

(E) A written opinion of nationally recognized bond counsel (who also may be the counsel to which reference is made in paragraph D above), to the effect that: (1) when executed for and in the name and on behalf of the District and when authenticated and delivered by the Trustee, those Additional Bonds will be valid and legal special obligations of the District in accordance with their terms and will be secured hereunder equally and, except as otherwise provided in this Section and in the Supplement authorizing such Additional Bonds, on a parity with all other Bonds of any

series at the time outstanding hereunder as to the assignment to the Trustee of the right, title and interest of the District in the Lease and moneys in the accounts of the funds created hereby (except as to any provision made by or pursuant to Sections 4.06, 5.09 or 5.10 hereof) and the moneys and investments therein to provide for payment of Bond Service Charges on the Bonds; and (2) the issuance of the Additional Bonds will not result in the interest on the Bonds outstanding immediately prior to that issuance becoming subject to federal income taxation.

(x) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth herein, no such issuance may occur (1) if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance and (2) unless the Reserve Fund is fully funded at the Reserve Requirement (including the proposed issue) upon the issuance of such Additional Bonds.

(d) When (i) the documents listed above have been received by the Trustee and (ii) the Additional Bonds have been executed and authenticated, the Trustee shall deliver the Additional Bonds to or on the order of the Original Purchaser thereof, but only upon payment to the Trustee of the specified amount (including without limitation, any accrued interest) set forth in the request and authorization to which reference is made in clause C of subsection (c)(v) above.

### **ARTICLE III**

#### **TERMS OF BONDS GENERALLY**

##### **SECTION 3.01. Form of Bonds.**

(a) The Series 2016 Bonds and any Additional Bonds (including the Forms of Certificate of Authentication, and Assignment) shall be substantially in the form set forth in Exhibit A hereto with, in the case of Additional Bonds, any omissions, insertions and variations which may be authorized or permitted by the Bond Resolution authorizing, or the Supplement entered into in connection with, those Additional Bonds, all consistent herewith. The Bonds may be issued as Book-Entry Bonds as provided in subsection (e) of this Section or be registered in the name of the Purchaser.

(b) All Bonds shall be in fully registered form in the denomination of \$5,000 or any integral multiple thereof, and, except as provided in Section 3.05 hereof, the Owner of a Bond shall be regarded as the absolute owner thereof for all purposes hereof.

(c) The Bonds of one series shall bear any designations which may be necessary or advisable to distinguish them from Bonds of any other series. The Bonds shall be negotiable

instruments, and shall express the purpose for which they are issued and any other statements or legends which may be required by law.

(d) Pending preparation of definitive Bonds, or by agreement with the Original Purchaser of all Bonds of any series, the District may issue and, upon its request, the Trustee shall authenticate, in lieu of definitive Bonds, one or more temporary printed or typewritten Bonds substantially in the form set forth in Exhibit A hereto, as applicable. Upon request of the District, the Trustee shall authenticate definitive Bonds in exchange for and upon surrender of an equal principal amount of temporary Bonds. Until so exchanged, temporary Bonds shall have the same rights, remedies and security hereunder as definitive Bonds.

(e) The Bonds shall be initially issued in the form of a single fully registered Bond for each maturity. Upon initial issuance, the ownership of each such Bond shall be registered in the name of the Purchaser of the Bond, or any successor thereto. With respect to any Book-Entry Bonds registered in the Bond Register in the name of the Depository, the Trustee shall have no responsibility or obligation to direct or indirect participants of the Depository or beneficial owners for which the Depository holds Book-Entry Bonds from time to time. Without limiting the immediately preceding sentence, the District and the Trustee shall have no responsibility or Bond with respect to (a) the accuracy of the records of the Depository or any direct or indirect participant thereof or any beneficial owner of an Bond with respect to the ownership interest in the Book-Entry Bond, (b) the delivery to any direct or indirect participant or any other person, other than a registered Owner of a Book-Entry Bond as shown in the Bond Register, of any notice with respect to the Book-Entry Bond, including any notice of redemption or (c) the payment to any direct or indirect participant or any other person, other than a registered Owner of a Book-Entry Bond as shown in the Bond Register, of any amount with respect to principal of, premium, if any, or interest on, the Book-Entry Bond. No person other than a registered Owner of a Book-Entry Bond as shown in the Bond Register shall receive a certificate evidencing such Book-Entry Bond.

In the event that (a) the District determines that the Depository is incapable of discharging its responsibilities described herein or (b) the agreement among the District, the Trustee and the Depository shall be terminated for any reason, the District shall notify the Depository of the unavailability through the Depository of Book-Entry Bond and the Book-Entry Bond shall no longer be restricted to being registered in the Bond Register in the name of the Depository. At that time, the District may determine that the Book-Entry Bond shall be registered in the name of and deposited with a successor depository operating a global book-entry system, as may be acceptable to the District, or such depository's agent or designee but, if the District does not select such alternate global book-entry system, then the Book-Entry Bond may be registered in whatever name or names the registered Owners of Book-Entry Bond transferring Book-Entry Bond shall designate, in accordance with the provisions hereof.

**SECTION 3.02. Variable Terms.** Subject to the provisions hereof, each series of Bonds shall be dated, shall mature in the years and the amounts, shall bear interest at the rate or rates per annum, shall be payable on the dates, shall have the Registrar and Paying Agents, shall be of the denominations, shall be subject to redemption on the terms and conditions and shall have such other terms which are set forth or provided for herein, in the case of the

Series 2016 Bonds, and in this Trust Agreement, in the applicable Bond Resolution and the Supplement in the case of any series of Additional Bonds.

**SECTION 3.03.      Execution and Authentication of Bonds.**

(a) Unless otherwise provided in the applicable Bond Resolution or Supplement, each Bond shall be signed by the Chair and the Secretary in their official capacities (provided that any or all of those signatures may be facsimiles). In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, his signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if he had remained in office until that time. Any Bond may be executed on behalf of the District by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer. In the event any officer of the Board of Directors of the District is unavailable or unable to discharge any obligation or duty with respect hereto, including the approval, execution or attestation of the Bond, then any member of the Board of Directors may act in the capacity of such officer for the purpose of discharging such obligation or duty.

(b) No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit hereunder unless and until a certificate of authentication, substantially in the form set forth in Exhibit A hereto shall have been signed by the Trustee. The authentication by the Trustee upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit hereof. The certificate of the Trustee may be executed by any person authorized by the Trustee, but it shall not be necessary that the same authorized person sign the certificates of authentication on all of the Bonds of a series.

**SECTION 3.04.      Source of Payment of Bonds.** To the extent provided herein and except as otherwise permitted hereby, the Bonds shall be special obligations of the District and the Bond Service Charges thereon shall be payable equally and ratably solely from the Lease Revenues; provided, that payment of Bond Service Charges on any series of Additional Bonds may be otherwise secured and protected from sources or by property or instruments not applicable to the Series 2016 Bonds and any one or more series of Additional Bonds, or not secured and protected from sources or by property or instruments applicable to the Series 2016 Bonds or one or more series of Additional Bonds. Notwithstanding anything to the contrary in the Bond Resolution, the Bonds or this Trust Agreement, the Bonds do not and shall not represent or constitute a debt or pledge of the full faith and credit of the District or of the State or of any political subdivision, municipality or other local agency thereof.

**SECTION 3.05.      Payment and Ownership of Bonds.**

(a) Bond Service Charges shall be payable in lawful money of the United States of America without deduction for the services of the Trustee or any Paying Agent.

(b) So long as the Bonds are Book-Entry-Only Bonds, payment of principal, interest and premium, if any, will be made to the Depository according to the rules of the



Depository. The Trustee shall send an invoice to the District no later than ten Business Days prior to each Interest Payment Date and Principal Payment Date of the amount due as Rent due under the Lease on such date, but failure to send such invoice shall not affect Greyhound's payment obligation.

(c) If the Bonds are not Book-Entry-Only Bonds, the following provisions will apply:

(i) Subject to the provisions of Section 3.09 hereof, (i) the principal of and any premium on any Bond shall be payable when due to an Owner upon presentation and surrender of such Bond at the designated **corporate trust office** of the Trustee or at the office, designated by the Trustee, of any Paying Agent, and (ii) interest on any Bond shall be paid on each Interest Payment Date by check which the Trustee shall cause to be sent on the Interest Payment Date to the Person in whose name the Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein. However, and to the extent that the District shall fail to make payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Owner of that Bond (or of one or more Predecessor Bonds) as of the applicable Regular Record Date and when moneys become available for payment of that interest, the Trustee shall, pursuant to Section 8.05, establish a Special Record Date for the payment of that interest which shall be not more than fifteen (15) nor fewer than ten (10) days prior to the date of the proposed payment, and the Trustee shall cause notice of the proposed payment and of the Special Record Date to be delivered to the Paying Agent and Registrar and mailed by first class mail, postage prepaid, to each Owner at its address as it appears on the registration books for the Bonds not fewer than ten (10) days prior to the Special Record Date and, thereafter, the interest shall be payable to the Persons who are the Owners of the Bonds (or their respective Predecessor Bonds) at the close of business on the Special Record Date.

(ii) On any Bond owned by a securities depository and on written request from any Owner of at least \$1,000,000 aggregate principal amount of Bonds, interest and if arrangements for surrender are made satisfactory to the Trustee, principal and premium, if any, may be paid by wire transfer, in immediately available funds, to an account address in the United States designated by the Owner. The written request must be received at least 20 days before the payment date and may specify that it will remain in effect for subsequent payment dates.

(iii) Subject to the foregoing, each Bond delivered under this Trust Agreement upon transfer thereof, or in exchange for or in replacement of any other Bond, shall carry the rights to interest accrued and unpaid, and to accrue on that Bond, or which were carried by that Bond.

(iv) Except as provided in this Section and in Sections 3.07(a) and 6.06 hereof, (i) the Owner of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes hereof, (ii) payment of or on account of the Bond Service Charges on any Bond shall be made only to or upon the order of that Owner or its duly authorized attorney in the manner permitted hereby, and (iii) neither the District, the Trustee, the Registrar nor any Paying

Agent shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid.

**SECTION 3.06.      Transfer and Exchange of Bonds.**

(a) So long as any of the Bonds remain Outstanding, the District shall cause books for the registration and transfer of Bonds, as provided in this Trust Agreement, to be maintained and kept at the designated office of the Registrar.

(b) Book-Entry-Only Bonds or any portion thereof shall not be transferable or exchangeable except:

(A) To any successor of the Depository;

(B) To any new Depository upon (a) the resignation of the then current Depository or its successor from its functions as Depository, or (b) termination of the use of the Depository by the District;

(C) To any Persons who are the assigns of the Depository or its nominee, upon (I) the resignation of the Depository from its functions as Depository hereunder or (II) termination of use of the Depository by the District.

(c) Any Bond, other than a Book-Entry-Only Bond, may be transferred on the Bond Register upon presentation and surrender thereof to the Registrar, together with an assignment duly executed by the Owner or his attorney duly authorized in any form which shall be satisfactory to the Registrar. No transfer of any Bond shall be effective until entered on the Bond Register.

(d) In all cases upon the transfer of a Bond, the Registrar shall enter the transfer of ownership in the Bond Register and shall authenticate and deliver, in the name of the transferee or transferees, a new fully registered Bond or Bonds of the denominations of \$5,000 or any integral multiple thereof (except that no Bond shall be issued which relates to more than a single principal maturity) of the same aggregate principal amount, maturity and rate of interest as the surrendered Bond, at the earliest practicable time in accordance with the provisions hereof.

(e) The Owner of one or more Bonds, other than Book-Entry Bonds, may, upon request, and upon the surrender to the Registrar of such Bonds, exchange such Bonds for Bonds of other authorized denominations of the same maturity, series, and interest rate together aggregating the same principal amount as the Bonds so surrendered.

(f) The District or the Registrar shall charge the Owner of such Bond, for every such transfer or exchange of an Bond, an amount sufficient to reimburse them for any tax, governmental fee or other governmental charge required to be paid with respect to such transfer, and may require that such charge be paid before any such new Bond shall be delivered. The District will pay all initial registration fees on the Bonds delivered to them or upon the request of

the Original Purchaser. Subsequent Bond Owners shall pay all transfer fees, governmental fees, taxes or charges. The Owner of any Bond will be required to pay any expenses incurred in connection with the replacement of a mutilated, lost, wrongfully taken or destroyed Bond.

(g) All Bonds issued upon any transfer or exchange of Bonds shall be the valid obligations of the District, evidencing the same debt, and entitled to the same benefits hereunder as the Bonds surrendered upon transfer or exchange. Neither the District nor the Registrar shall be required to make any exchange or transfer of a Bond during a period (i) from the Regular Record Date to and including the respective Interest Payment Date, or (ii) from fifteen (15) days prior to the selection of the Bonds to be redeemed to and including the date on which notice of redemption is given. The Registrar may, but is not required to, transfer or exchange any Bonds which have been selected for redemption. If the Registrar transfers or exchanges Bonds within the periods referred to above, the interest payment on such Bonds will be made payable to and mailed to the registered owners shown on the Bond Register maintained by the Registrar and Paying Agent as of the close of business on the respective Regular Record Date.

(h) Except as otherwise provided in the Book-Entry-Only System, in case any Bond is redeemed in part only, on or after the redemption date and upon presentation and surrender of the Bond, the District, subject to the provisions of Section 3.09 hereof, shall cause execution of, and the Registrar shall authenticate and deliver, a new Bond or Bonds of the same series in authorized denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date or dates as, the Bond redeemed in part.

(i) The designated office of the Registrar for purposes of this Section shall be established by the Trustee.

### **SECTION 3.07. Mutilated, Lost, Wrongfully Taken or Destroyed Bonds.**

(a) If any Bond is mutilated, lost, wrongfully taken or destroyed, in the absence of written notice to the District or the Registrar that a lost, wrongfully taken or destroyed Bond has been acquired by a bona fide purchaser, the District shall execute, and the Registrar shall authenticate and deliver, a new Bond of like date, maturity and denomination and of the same series as the Bond mutilated, lost, wrongfully taken or destroyed; provided, that (i) in the case of any mutilated Bond, the mutilated Bond first shall be surrendered to the Registrar, and (ii) in the case of any lost, wrongfully taken or destroyed Bond, there first shall be furnished to the Registrar evidence of the loss, wrongful taking or destruction satisfactory to the District, the Trustee and the Registrar, together with indemnity satisfactory to the Trustee and the Registrar.

(b) If any lost, wrongfully taken or destroyed Bond shall have matured, instead of issuing a new Bond, the District may direct the Trustee to pay that Bond without surrender thereof upon the furnishing of satisfactory evidence and indemnity as in the case of issuance of a new Bond. The District, the Registrar and the Trustee may charge the Owner of a mutilated, lost, wrongfully taken or destroyed Bond their reasonable fees and expenses in connection with their actions pursuant to this Section.

(c) Every new Bond issued and authenticated pursuant to this Section by reason of any Bond being mutilated, lost, wrongfully taken or destroyed (i) shall constitute, to the extent of the outstanding principal amount of the Bond lost, mutilated, taken or destroyed, an additional contractual obligation of the District, regardless of whether the mutilated, lost, wrongfully taken or destroyed Bond shall be enforceable at any time by anyone, and (ii) shall be entitled to all of the benefits of this Trust Agreement equally and proportionately with any and all other Bonds issued and outstanding hereunder.

(d) All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or destroyed Bonds and, to the extent permitted by law, shall preclude any and all other rights and remedies with respect to the replacement or payment of negotiable instruments or other investment securities without their surrender, notwithstanding any law or statute to the contrary now existing or enacted hereafter.

### **SECTION 3.08.      Safekeeping and Cancellation of Bonds.**

(a) Any Bond surrendered pursuant to this Article for the purpose of payment or retirement, or for exchange, replacement or transfer, shall be cancelled upon presentation and surrender thereof to the Registrar, the Trustee or any Paying Agent. Any Bond cancelled by the Trustee or a Paying Agent shall be transmitted promptly to the Registrar by the Trustee or Paying Agent.

(b) The District may deliver at any time to the Registrar for cancellation any Bonds previously authenticated and delivered hereunder, which the District may have acquired in any manner whatsoever. All Bonds so delivered shall be cancelled promptly by the Registrar. Certification of the surrender and cancellation shall be made to the District and the Trustee by the Registrar semiannually during the term hereof, commencing July 1, 2016. Unless otherwise directed by the District, Bonds which have been fully paid and cancelled may be destroyed eighteen (18) months after payment and cancellation. Bonds which have been surrendered for the purpose of exchange, transfer or replacement shall be marked "Cancelled" and retained and stored by the Registrar for a period of six (6) years after their cancellation and may, thereafter, be returned to the District or destroyed. Certificates of any destruction of cancelled obligations (describing the manner thereof) shall be provided by the Registrar to the District and the Trustee at the request of the District.

### **SECTION 3.09.      Special Agreement With Owners.**

(a) Notwithstanding any provision hereof or of any Bond to the contrary, with the approval of the District, the Trustee may enter into an agreement with any Owner providing for making all payments to that Owner of principal of and interest and any premium on that Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided herein and in the Bond, without presentation or surrender of the Bond, upon any conditions which shall be satisfactory to the Trustee and the District; provided, that payment in any event shall be made to the Person in whose name a Bond shall be registered on the Bond Register, with respect to payment of principal and premium, on

the date such principal and premium is due, and, with respect to the payment of interest, as of the applicable Regular Record Date or Special Record Date, as the case may be.

(b) Upon request, the Trustee will furnish a copy of each of those agreements, certified to be correct by an officer of the Trustee, to the Registrar and the District. Any payment of principal, premium or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Trust Agreement.

## ARTICLE IV

### REDEMPTION OR PURCHASE OF BONDS

**SECTION 4.01.**     **Redemption or Purchase of Series 2016 Bonds.**     The Bonds shall be subject to optional and mandatory redemption.

**SECTION 4.02.**     **Terms of Redemption.**

(a)   Series 2016 Bonds.

(i)   Optional Redemption. The Series 2016 Bonds maturing on or before July 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series 2016 Bonds maturing on or after July 1, 20\_\_ are subject to optional redemption prior to maturity at the option of the District, from any available funds, in whole or in part, in denominations of \$5,000 or integral multiples thereof from maturities selected by the District and by lot within a maturity, on July 1, 20\_\_, and on any date thereafter by the payment of a redemption price equal to the principal amount of each such Series 2016 Bond called for redemption plus interest accrued to the date fixed for redemption, but without premium.

(ii)   Mandatory Redemption. The Series 2016 Bonds maturing on July 1, 20\_\_ are subject to mandatory redemption prior to their stated maturity, by the Depository through the procedures of its book-entry-only system, or if the book-entry only system is not in effect, then by lot by the Trustee, on July 1 of the following years, and in the following principal amounts, at a redemption price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year</u>	<u>Principal Amount</u>
20__	\$
20__ (Maturity)	

The Series 2016 Bonds maturing on July 1, 20\_\_ are subject to mandatory redemption prior to their stated maturity, by the Depository through the procedures of its book-entry-only system, or if the book-entry only system is not in effect, then by lot by the Trustee, on July 1 of the following years, and in the following principal amounts, at a redemption price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year</u>	<u>Principal Amount</u>
20	\$
20	
20 (Maturity)	

(iii) Whenever Series 2016 Bonds subject to mandatory redemption are redeemed (other than pursuant to mandatory redemption) or are delivered to the Registrar for cancellation, the principal amount of the Series 2016 Bonds of such maturity so retired shall satisfy and be credited against the mandatory redemption requirements for such maturity as designated by the District; *provided, however*, that following such reduction each mandatory redemption requirement is an integral multiple of \$5,000. Such option must be exercised on or before the 60<sup>th</sup> day preceding the applicable Redemption Date, by furnishing the Trustee a certificate setting forth the extent of the credit to be applied with respect to the then current mandatory redemption requirement. If the certificate is not timely furnished, the mandatory redemption requirement will not be reduced.

(iv) Extraordinary Mandatory Redemption. The Series 2016 Bonds shall be subject to special mandatory redemption prior to maturity on any date selected by the District not later than 180 days after the occurrence of a Determination of Taxability at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the redemption date, but without premium. Any such special mandatory redemption shall be in whole unless it is finally determined as evidenced by an opinion of Bond Counsel delivered and addressed to the District and the Trustee that less than all of the Series 2016 Bonds may be redeemed without adversely affecting the exclusion of interest on the remaining Series 2016 Bonds from gross income for federal income tax purposes, in which case only the principal amount of Series 2016 Bonds indicated in such opinion need be redeemed.

If the Trustee receives written notice from any Owner stating that (i) the Owner has been notified in writing by the Internal Revenue Service that it proposes to include the interest on any Series 2016 Bond in the gross income of such Owner for the reasons stated in the definition of "Determination of Taxability" set forth herein or any other proceeding has been instituted against such owner which may lead to a Final Determination, and (ii) such Owner will afford the District the opportunity to contest the same, either directly or in the name of the Owner, until a conclusion of any appellate review, if sought, then the Trustee shall promptly give notice thereof to the District and to the Owner of Series 2016 Bonds then Outstanding. If a Final Determination thereafter occurs, the Trustee shall make demand for prepayment of the unpaid Bond Service Charges or necessary portions thereof from the District and give notice of the special mandatory redemption of the appropriate amount of Series 2016 Bonds on the date selected by the District within the required period of 180 days. In taking any action or making any determination under this Section 4.02(iv), the Trustee may conclusively rely on an opinion of counsel.

(v) Extraordinary Optional Redemption. The Series 2016 Bonds shall be subject to redemption in whole prior to maturity at the option of the District if any part of the Special Facility is Destroyed or Condemned (as described in Sections 12.01 and 12.02 herein) at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the redemption date.

(b) Additional Bonds. Additional Bonds shall be subject to redemption as provided in the applicable Supplement.

**SECTION 4.03. Partial Redemption.** If fewer than all of the outstanding Bonds of a series that are stated to mature on different dates are to be redeemed at one time, those Bonds which are to be redeemed shall be redeemed in any order of the maturities of the Bonds of that series to be redeemed requested by the District. If fewer than all of the Bonds of a single maturity of a series are to be redeemed, the selection of Book-Entry-Only Bonds of that maturity to be redeemed shall be made by the Depository. For other Bonds, selection of Bonds to be redeemed, or portions thereof in amounts of \$5,000 or any integral multiple thereof, shall be made by lot or such other manner selected by the Trustee. In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then outstanding, each \$5,000 unit of face value of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of face value represented by a Bond are to be redeemed, then upon notice of redemption of a \$5,000 unit or units, the Owner of that Bond shall surrender the Bond to the Trustee (i) for payment of the redemption price of the \$5,000 unit or units of face value to be redeemed, and (ii) for issuance, without charge to the Owner thereof, of a new Bond or Bonds of the same series, of any authorized denomination or denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

**SECTION 4.04. District's Election to Redeem.** The District will redeem any Bonds subject to redemption. The District shall give written notice to the Trustee. In the event that notice of redemption shall have been given by the Trustee to the Owners as provided in Section 4.05 hereof, if there has not been deposited with the Trustee prior to the redemption date, funds which, in addition to any other moneys available therefor and held by the Trustee, will be sufficient to redeem at the redemption price thereof, plus interest accrued to the redemption date, all of the redeemable Bonds for which notice of redemption has been given then such redemption shall be cancelled and of no effect and notice of cancellation shall be sent in the manner and to the persons that notice of redemption had been sent.

**SECTION 4.05. Notice of Redemption.**

(a) The notice of redemption of Bonds, if required, shall identify (i) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (ii) the redemption price to be paid, (iii) the date fixed for redemption, and (iv) the place or places where the amounts due upon redemption are payable. The notice will also state whether the funds necessary for the redemption are on deposit with the Trustee or whether the redemption is conditional on such funds being deposited prior to the date set for redemption.

**SECTION 4.06.      Payment of Redeemed Bonds.**

(a) If notice is mailed as provided in Section 4.05 hereof, the Bonds and portions thereof to be redeemed shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice and shall be paid at the redemption price, plus interest accrued to the redemption date.

(b) If moneys for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, are held by the Trustee or any Paying Agent on the redemption date, so as to be available therefor on that date and, if notice of redemption shall have been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof to be redeemed shall cease to bear interest and no longer shall be considered to be outstanding hereunder. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, the redemption shall be cancelled and of no effect and those Bonds and portions thereof shall continue to bear interest until they are paid, at the same rate as they would have borne had they not been called for redemption.

(c) All moneys deposited in the Bond Retirement Fund and held by the Trustee or a Paying Agent for the redemption of particular Bonds shall be held in trust for the account of the Owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

**SECTION 4.07.      Variation of Redemption Provisions.** The provisions of this Article IV, insofar as they apply to the issuance of any series of Additional Bonds, may be varied by the Supplement providing for that series.

**SECTION 4.08.      Purchase of Bonds.** Notwithstanding the foregoing, if at any time there is money in the Bond Retirement Fund and any of the outstanding Bonds payable from such Bond Retirement Fund may be purchased in the open market at a net cost to the District which would be less than the cost of redeeming such Bonds under the provisions of this Article (or, prior to the time such Bonds may be redeemed, at a price equal to or below par), the District, from time to time, may cause the Trustee to purchase so many of such Bonds as the District shall designate and to pay therefor from the Bond Retirement Fund, to the extent of the funds in such Fund. The Bonds so purchased shall be cancelled by the Trustee in accordance with the provisions of Section 3.08 hereof.

**ARTICLE V**

**PROVISIONS AS TO FUNDS  
AND PAYMENTS**

**SECTION 5.01.      Establishment of Funds.** There are hereby ordered established by the District and maintained as separate deposit accounts (except when invested as



hereinafter set forth) in the custody of the Trustee, the following trust funds: (i) Bond Retirement Fund, comprised of the Interest Account and the Principal Account; (ii) Reserve Fund; and (iii) Acquisition and Construction Fund. Notwithstanding the foregoing, additional funds and accounts may be created in any Supplement including, without limitation, funds for construction or acquisition of improvements and additions to the Special Facility.

**SECTION 5.02. Application of Series 2016 Bond Proceeds.** The District shall deposit with the Trustee all of the proceeds of the Series 2016 Bonds and net of underwriters' compensation and upon receipt of such proceeds the Trustee, shall:

(a) Deposit to the credit of the Interest Account, \$\_\_\_\_\_, of which \$\_\_\_\_\_ is capitalized interest, representing a portion of the proceeds of the Series 2016 Bonds to be used to pay interest on the Series 2016 Bonds on the \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_, Interest Payment Dates; and

(b) Deposit to the Reserve Fund the sum of \$\_\_\_\_\_.

(c) Deposit to the Acquisition and Construction Fund the sum of \$\_\_\_\_\_.

**SECTION 5.03. Disbursements From Acquisition and Construction Fund.**

(a) The Trustee shall hold the moneys in the Acquisition and Construction Fund for the benefit of the District to pay the Delivery Costs and Costs of Acquisition, upon written order executed and delivered to the Trustee from the District Representative directing such disbursements as follows:

(i) In the case of payment of Delivery Costs, the Trustee shall disburse moneys in the Acquisition and Construction Fund only upon a requisition signed by an District Representative in a form substantially similar to the Payment Request Form attached hereto as Exhibit B or the Reimbursement Request Form attached hereto as Exhibit C, on which the Trustee shall be entitled to conclusively rely, without investigation, setting forth the amounts to be disbursed for payment or reimbursement of Delivery Costs and the person or persons to whom said amounts are to be disbursed, stating that the amounts to be disbursed are for Delivery Costs properly chargeable to the Acquisition and Construction Fund.

(ii) In the case of payment of the Costs of Acquisition, the Trustee shall disburse moneys in the Acquisition and Construction Fund only upon a requisition signed by an District Representative, on which the Trustee shall be entitled to conclusively rely, without investigation, setting forth the amounts to be disbursed for payment or reimbursement of Costs of Acquisition in a form substantially similar to the Payment Request Form attached hereto as Exhibit B or the Reimbursement Request Form attached hereto as Exhibit C.

(b) The Trustee shall be responsible for holding the moneys in the Acquisition and Construction Fund and the payment thereof in accordance with this Section. Upon the filing with the Trustee of a certificate of a District Representative stating that all of the Delivery Costs and Costs of Acquisition have been paid, the Trustee shall transfer to the Bond Retirement Fund the balance of moneys remaining in the Acquisition and Construction Fund and the Trustee shall apply such moneys to the next Bond Service Charges. The Trustee shall provide notice of and the amount of such transfer to the District. Additionally, when the Trustee sends the District an invoice pursuant to Section 3.05(b) hereof, the invoice shall reflect the corresponding reduction in Rent due under the Lease.

**SECTION 5.04. Payment of Rent to Trustee for Payment of the Series 2016 Bonds.** In order to ensure that the District has the funds to pay the principal and interest due on the Series 2016 Bonds and to deposit the required funds into the Reserve Fund, Greyhound shall wire the Rent due under the Lease to the Trustee and the Trustee shall credit such moneys to the Bond Retirement Fund and the Reserve Fund in accordance with Section 5.05 below and the Deed of Trust and Assignment of Rents and Grants dated \_\_\_\_\_, between the Trustee and the District.

**SECTION 5.05. Flow of Funds.** The Trustee shall transfer to the Bond Retirement Fund and the Reserve Fund the following amounts at the time and in the manner hereinafter provided for, applying money in the Bond Retirement Fund, to the extent available, in the following order of priority, to wit:

(i) Interest Account: On each Interest Payment Date, the Trustee shall deposit in the Interest Account an amount equal to the amount of the interest becoming due and payable on the outstanding Bonds on the next Interest Payment Date, and each such deposit shall be made so that adequate moneys for the payment of interest will be available in such account on each date that interest payments are to be made hereunder. Money in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable.

(ii) Principal Account: On each Principal Payment Date, the Trustee shall deposit in the Principal Account an amount equal to the amount of the principal becoming due and payable on the Outstanding Bonds on the next Principal Payment Date, and each such deposit shall be made so that adequate moneys for the payment of principal will be available in such account on each date that principal payments are to be made hereunder. Money in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds as each amount shall become due and payable.

(iii) Reserve Fund: On January 1 and July 1, the Trustee shall deposit in the Reserve Fund any moneys received by the Trustee for deposit therein pursuant to this Trust Agreement. Money in the Reserve Fund shall be used and withdrawn by the Trustee pursuant to Section 5.06.

(iv) District: Money in excess of the amount necessary to meet the requirements of the Bond Retirement Fund and the Reserve Fund shall be transferred the District.

**SECTION 5.06.      Reserve Fund.**

(a) All moneys at any time on deposit in the Reserve Fund shall be held by the Trustee in trust for the benefit of the Owners of Bonds for which the Reserve Fund has been funded, and applied solely as provided herein. Initially, there shall be deposited in the Reserve Fund the Reserve Requirement; provided, however, the Reserve Requirement for the Series 2016 Bonds shall not exceed \$\_\_\_\_\_. Moneys in the Reserve Fund shall be held in trust as a reserve for the payment when due of all Bond Service Charges.

If on January 1 or July 1 the moneys available in the Bond Retirement Fund do not equal the amount of the Bond Service Charges then due and payable on such January 1 or July 1 with respect to the Outstanding Bonds, the Trustee shall apply the moneys available in the Reserve Fund to remedy such deficiencies by transferring the amount necessary for this purpose to the Bond Retirement Fund. Upon receipt of any delinquent rental payment with respect to which moneys have been advanced from the Reserve Fund, such rental payment shall be deposited in the Reserve Fund pursuant to Section 5.05 to the extent necessary to equal the Reserve Requirement. Transfers from the Reserve Fund to the Bonds Retirement Fund shall not result in a credit or reduction of Greyhound's obligation to pay the Rent.

(b) If amounts in the Reserve Fund and the Bond Retirement Fund (excluding amounts required for payment of the Bond Service Charges with respect to the Bonds not presented for payment) are sufficient to pay all Outstanding Bonds, including all Bond Service Charges, the Trustee shall transfer all amounts then on deposit in the Reserve Fund to the Bond Retirement Fund and shall thereafter use such amounts to pay the Bonds and pay all remaining Bond Service Charges. The Trustee shall provide notice of and the amount of such transfer to the District. Additionally, when the Trustee sends the District an invoice pursuant to Section 3.05(b) hereof, the invoice shall reflect the corresponding reduction in Rent due under the Lease. Any amounts remaining in the Reserve Fund upon payment in full of all Outstanding Bonds, or upon provision for such payment as provided in Article X hereof, shall be withdrawn by the Trustee and returned to the District.

(c) The Reserve Fund shall be valued at the following times: (i) as of the initial issuance of Bonds; (ii) each December 1 and June 1; and (iii) immediately after a Reserve Fund draw down occurs which transfers moneys or investments to the Bond Retirement Fund to cover an insufficiency therein. The Trustee shall promptly notify the District of the amount of any deficiency from the Reserve Requirement.

(d) The District may present a Qualified Surety Bond for deposit into the Reserve Fund or in exchange for the moneys and investments then on deposit in the Reserve Fund. The District agrees to comply with the terms and provisions of the agreement pertaining to the issuance and reimbursement of the Qualified Surety Bond. The Qualified Surety Bond (if

other than a surety bond or insurance policy issued by a bond insurer) and the Qualified Surety Issuer (if other than a bond insurer) shall comply with the following:

1. A surety bond or insurance policy by a company licensed to issue an insurance policy guaranteeing the timely payment of Debt Service on the Bonds (a "municipal bond insurer") may be deposited in the Reserve Fund to meet the Reserve Requirement if the claims paying ability of the issuer thereof shall be rated "AAA" or "Aaa" by S&P or Moody's, respectively.
2. A surety bond or insurance policy by an entity other than a municipal bond insurer may be deposited in the Reserve Fund to meet the Reserve Requirement.
3. An unconditional irrevocable letter of credit by a bank may be deposited in the Reserve Fund to meet the Reserve Requirement if the issuer thereof is rated at least "AA" by S&P. The letter of credit shall be payable in one or more draws upon presentation by the Trustee of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest on the applicable obligations. The draws shall be payable within two Business Days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the District and the Trustee, not later than 12 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.
4. If such notice indicates that the expiration date shall not be extended, the District shall deposit in the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Reserve Fund together with any other Qualified Surety Bond, to equal the Reserve Requirement on all outstanding Bonds, such deposit to be paid in equal installments on at least a semi-annual basis over the remaining term of the letter of credit, unless the Qualified Surety Bond is replaced by a Qualified Surety Bond meeting the requirements in any of 1-2 above. The letter of credit shall permit a draw in full not less than two weeks prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Trustee is directed to draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Reserve Fund is fully funded in its required amount.
5. The use of any Qualified Surety Bond pursuant to this Section 5.06(d) shall be subject to receipt of an opinion of counsel as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally and as to the Qualified Surety Bond meeting the requirements set forth in this Trust Agreement, and, in the event the issuer of such credit instrument is not

a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the Bond Counsel. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the District (or any other account party under the letter of credit).

6. Notwithstanding any other provision of this Trust Agreement or of the Lease, the obligation to reimburse the issuer of a Qualified Surety Bond for any fees, expenses, claims or draws upon such Qualified Surety Bond shall be subordinate to the payment of Debt Service on the Bonds. The right of the issuer of a Qualified Surety Bond to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Reserve Fund, and, subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Reserve Fund. The Qualified Surety Bond shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Qualified Surety Bond to reimbursement will be further subordinated to cash replenishment of the Reserve Fund to an amount equal to the difference between the full original amount available under the Qualified Surety Bond and the amount then available for further draws or claims. If (a) the issuer of a Qualified Surety Bond becomes insolvent or (b) the issuer of a Qualified Surety Bond defaults in its payment obligations thereunder or (c) the claims-paying ability of the issuer of the insurance policy or surety bond falls below a S&P "AAA" or a Moody's "Aaa" or (d) the rating of the issuer of the Qualified Surety Bond falls below a S&P "AA", the obligation to reimburse the issuer of the Qualified Surety Bond shall be subordinate to the cash replenishment of the Reserve Fund.
7. If (a) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated or (b) the rating of the claims paying ability of the Qualified Surety Issuer of the surety bond or insurance policy falls below a S&P "AAA" or a Moody's "Aaa" or (c) the rating of the issuer of the letter of credit falls below a S&P "AA" the District shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund to equal the Reserve Requirement on all outstanding Bonds, such amount to be paid over the ensuing five years in equal installments deposited at least semi-annually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting requirements in any of 1-3 above within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the

issuer of the surety bond or insurance policy falls below "A" or (b) the rating of the issuer of the letter of credit falls below "A" or (c) the issuer of the Qualified Surety Bond defaults in its payment obligations or (d) the issuer of the Qualified Surety Bond becomes insolvent, the District shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or Eligible Investments on deposit in the Reserve Fund to equal to Reserve Requirement on all outstanding Bonds, such amount to be paid over the ensuing year in equal installments on at least a monthly basis or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence.

8. Where applicable, the amount available for draws or claims under the Qualified Surety Bond may be reduced by the amount of cash or Eligible Investments deposited in the Reserve Fund pursuant to clauses (c)(i) or (d)(ii) of the preceding subparagraph 7.
9. If the District chooses the above-described alternatives to a cash-funded Reserve Fund, any amounts owed by the District to the issuer of such credit instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of Debt Service on the Bonds requirements required to be made pursuant to this Trust Agreement or the Lease for any purpose, e.g., rate covenant or additional bonds test.
10. The Trustee shall ascertain the necessity for a claim or draw upon the Qualified Surety Bond and provide notice to the issuer of the Qualified Surety Bond in accordance with its terms not later than three Business Days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Qualified Surety Bond) prior to each Interest Payment Date.
11. Cash on deposit in the Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Qualified Surety Bond. If and to the extent that more than one Qualified Surety Bond is deposited in the Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

(e) Each Supplement pertaining to the issuance of any Additional Bonds shall require that the Trustee shall receive a Qualified Surety Bond or a cash deposit into the Reserve Fund in an amount equal to the amount required to cause the Reserve Fund to equal the Reserve Requirement immediately after issuance of the Additional Bonds. No deposit need be made into the Reserve Fund if the money, investments and amount of the Qualified Surety Bond contained therein is at least equal to an amount equal to such Reserve Requirement.

(f) If on any valuation date (as set forth in Section 5.06(c) hereof) the amount in the Reserve Fund exceeds the Reserve Requirement and if the District is not then in default under the Trust Agreement, the Trustee shall withdraw the amount of any such excess from such fund and shall deposit such amount in the Bond Retirement Fund. Except for such withdrawals, all money in the Reserve Fund shall be used and withdrawn solely for the purpose of paying the interest on or principal of the Series 2016 Bonds and any Additional Bonds in the event that no other money of the District is available therefor, or for the retirement of all the Series 2016 Bonds and any Additional Bonds then outstanding.

**SECTION 5.07. Investment of Funds.** At the written direction of the District Representative, substantially all money in any of the funds to be established by the Trustee pursuant to this Article V, so long as Greyhound is not in default under the Lease, shall be invested and reinvested by the Trustee in Eligible Investments, unless otherwise provided. Rental Payments received from Greyhound shall be invested only in U.S. treasury obligations or cash. Such investments of moneys shall mature or be redeemable at the option of the holder at the times and in the amounts necessary to provide moneys to pay Bond Service Charges as they become due at stated maturity, by redemption or pursuant to any mandatory sinking fund requirements. Except as otherwise provided in this Article V, any interest, profit or loss on investments made pursuant to this Section 5.07 shall be credited or charged to the Fund to which such interest, profit or loss relates. At any time that Greyhound is in default under the Lease, substantially all money in any of the funds to be established by the Trustee pursuant to this Article V shall be invested and reinvested by the Trustee at the written direction of the District in Eligible Investments. Eligible Investments attributable to moneys in the Reserve Fund shall not have maturities extending beyond five (5) years.

In order to provide the information necessary for the District to comply with the provisions of the Code relating to rebate, the Trustee agrees to maintain records with respect to each and every investment of the moneys in the funds and accounts established pursuant hereto. Records of all investments shall include (i) purchase date, (ii) purchase price, (iii) any accrued interest paid, (iv) face amount, (v) coupon rate, (vi) periodicity of interest payments, (vii) disposition price, (viii) any accrued interest received, and (ix) disposition date. The Trustee shall not invest any cash held by it hereunder in the absence of timely and specific written direction from the District. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the District to provide timely written investment direction. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Trust Agreement. The Trustee may conclusively rely upon such written direction from the District as to both the suitability and legality of the directed investments. The District acknowledges that regulations of the Comptroller of the Currency grant the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the District specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

**SECTION 5.08. Limitation of Investment Yield.** In the event the District (while it is directing investments) or nationally recognized bond counsel is of the opinion that it

is necessary to restrict or limit the yield on the investment of any money paid to or held by the Trustee hereunder in order to avoid the Bonds, or any of them, being considered "arbitrage bonds" within the meaning of Section 148 of the Code, the District or nationally recognized bond counsel, as the case may be, may issue to the Trustee a written certificate or other instrument to such effect (along with appropriate instructions), in which event the Trustee, with the cooperation of the District will take such action as has been reasonably directed by any such parties so to restrict or limit the yield on such investment in accordance with the specific instructions contained in such certificate or other instrument.

**SECTION 5.09. Moneys to Be Held in Trust.** Except where moneys have been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all moneys required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision hereof, the Lease and any investments thereof, shall be held by the Trustee or that Paying Agent in trust. Except for (i) moneys deposited with or paid to the Trustee or any Paying Agent for the redemption of Bonds, notice of the redemption of which shall have been duly given, and (ii) moneys held by the Trustee pursuant to Section 5.10 hereof, all moneys described in the preceding sentence held by the Trustee or any Paying Agent shall be subject to the lien hereof while so held.

**SECTION 5.10. Non-presentment of Bonds and Payment of Unclaimed Amounts.**

(a) In the event that any Bond shall not be presented for payment when the principal thereof becomes due in whole or in part, either at stated maturity, by redemption or pursuant to any mandatory sinking fund requirements, or a check for interest is uncashed, if moneys sufficient to pay the principal then due of that Bond or of such check shall have been made available to the Trustee for the benefit of its Owner, all liability of the District to that Owner for such payment of the principal then due of the Bond or of such check thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold those moneys, without liability for interest thereon, in a separate account for the exclusive benefit of the Owner, who shall be restricted thereafter exclusively to those moneys for any claim of whatever nature on its part under this Trust Agreement or on, or with respect to, the principal then due of that Bond or of such check.

(b) Any of those moneys which shall be so held by the Trustee, and which remain unclaimed by the Owner of an Bond not presented for payment or check not cashed for a period of two years and six months after the due date thereof (subject to applicable escheat law), shall be paid to the District free of any trust or lien. Thereafter, the Owner of that Bond shall look only to the District for payment and then only to the amounts so received by the District without any interest thereon, and the Trustee shall not have any responsibility with respect to those moneys.



## ARTICLE VI

### PLEDGE; PROTECTION OF LIEN AND TAX COVENANTS

**SECTION 6.01. Pledge.** The Series 2016 Bonds are payable from a pledge of, and secured by a lien on, the Lease Revenues as may be necessary for its prompt and punctual payment on parity with the pledge of the Lease Revenues to the payments due on any Additional Bonds as provided herein. Said pledge of, and said lien on, the Lease Revenues is hereby irrevocably made and created by the District for the prompt and punctual payment of principal and interest due on the Series 2016 Bonds according to their terms. None of the Bonds shall be entitled to priority or distinction one over the other in the application of the Lease Revenues hereby pledged to the payment thereof, regardless of the issue of the Bonds in series, or the delivery of any of the Bonds prior to the delivery of any other of the Bonds of said series, or regardless of the time or times the Bonds mature or are called for redemption prior to maturity or otherwise. All of the Bonds are co-equal as to the pledge of and lien on the Lease Revenues pledged for the payment thereof and share ratably, without preference, priority or distinction, as to the source or method of payment from Lease Revenues or security therefor.

So long as any of the Bonds remain outstanding, and the principal of and interest thereon are unpaid or unprovided for, the District covenants herein that it will not further pledge or encumber Lease Revenues on a basis senior or superior to the pledge of Lease Revenues providing security therefor.

**SECTION 6.02. Protection of Lien.** The Trustee and the District hereby agree not to make or create or suffer to be made or created any assignment or lien having priority or preference over the assignment and lien hereof upon the interests granted hereby or any part thereof. The Trustee and the District agree that no obligations the payment of which is secured by a superior or equal claim on or interest in property or revenues pledged hereunder will be issued by either except in lieu of, or upon transfer of registration or exchange of, any Bond as provided herein and except for Additional Bonds.

**SECTION 6.03. Arbitrage Covenant.** The District hereby covenants with the Owners of the Series 2016 Bonds that it will make no use of the proceeds of the Series 2016 Bonds or other moneys which would cause the Series 2016 Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Internal Revenue Code of 1986, as amended.

**SECTION 6.04. General Tax Covenants.** In consideration of the acceptance and execution of this Trust Agreement by the Trustee and the purchase by the Owners of Series 2016 Bonds, from time to time, and in consideration of retaining the exclusion of the interest income on the Series 2016 Bonds from gross income for federal income tax purposes, and as authorized by Title 28, Chapter 24, Article 8, Arizona Revised Statutes, as amended, the District covenants, and the appropriate officials of the District are hereby directed, to take all action required, or to refrain from taking any action prohibited, by the Internal Revenue Code of 1986, as amended, the District covenants with the Trustee and the Series 2016

Bondholders from time to time to neither take nor fail to take any action, which action or failure to act is within its power and District and would result in the interest income on the Series 2016 Bonds to become subject to inclusion in gross income for federal income tax purposes under either laws existing on the date of execution of this Trust Agreement or such laws as they may be modified or amended.

The District agrees that it will comply with such requirement(s) and will take any such action(s) as are necessary to prevent interest income on the Series 2016 Bonds from becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by special counsel; to pay to the United States of America any required amounts representing rebates of arbitrage profits relating to this Trust Agreement; filing forms, statements and supporting documents as may be required under the federal tax laws; limiting the term of and yield on investments made with moneys relating to this Trust Agreement; and limiting the use of the proceeds of this Trust Agreement and property financed thereby.

In the event that the District is required to rebate its earnings and profits from the investment of the Series 2016 Bonds, the Trustee shall establish a separate "Arbitrage Rebate Fund". The Arbitrage Rebate Fund shall be held separate and apart from all other funds and accounts held by the Trustee. The Arbitrage Rebate Fund shall be funded with earnings and profits from the investment of the Series 2016 Bond proceeds on an annual basis. The District will compute, or engage professionals to compute, the exact amount of earnings which need to be deposited into the Arbitrage Rebate Fund no later than sixty (60) days before each anniversary of the Series 2016 Bond execution and delivery. The District shall provide the Trustee with copies of such computations.

No later than sixty (60) days after each fifth anniversary of the Series 2016 Bond execution and delivery, upon receipt from the District, the Trustee shall file a completed Form 8038-T, if required, and remit the payment required by Code Section 148(f)(3), as directed by the District with the Internal Revenue Service Center, Ogden, Utah 84201. Such payment shall be from moneys contained in the Arbitrage Rebate Fund. In addition, upon the payment of the last Series 2016 Bond, upon receipt from the District, the Trustee shall file, within sixty (60) days after the last redemption, a completed Form 8038-T and remit, as directed by the District, the final payment as required by Code Section 148(f)(3). In the event there is insufficient moneys in the Arbitrage Rebate Fund to make a payment when due, the District shall pay to the Trustee from money lawfully available therefor the amount necessary to provide the Trustee with an amount sufficient to make such payment when due.

The District recognizes that Section 149(a) of the Code requires the Series 2016 Bonds to be issued and to remain in fully registered form in order that interest thereon is exempt from federal income taxation under laws in force at the time the Series 2016 Bonds are delivered. In this connection, the District agrees that it will not take any action to permit the Series 2016 Bonds to be issued in, or converted into, bearer or coupon form.

**SECTION 6.05. Specific Tax Covenants Regarding Exempt Facility Mass Transit Bonds.** The District hereby covenants as follows:

- a. 95% or more of the net proceeds of the Series 2016 Bonds were used to acquire, construct and equip the Special Facility.
- b. The District will not nor allow the Lessee or its sublessees to make an irrevocable election (binding on the Lessee and all successors in interest or sublessee and all successors in interest) to claim depreciation or an investment credit with respect to the Special Facility.
- c. The terms of any sublease to a private party shall not be more than 80% of the reasonably expected economic life of the Special Facility.
- d. Neither the Lease nor does the Lessee permit Greyhound to purchase the Special Facility.
- e. No portion of the Special Facility includes any office space except to the extent that
  - (i) The office is located in the Special Facility; and
  - (ii) Not more than a de minimus amount of the functions to be performed at such office is directly related to the date-to-day operations of the Special Facility.
- f. Any storage or training facilities included within the Special Facility are directly related thereto. The Special Facility does not include any of the following:
  - (i) Any lodging facility;
  - (ii) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the Special Facility;
  - (iii) Any retail facility (other than parking) for passengers or the general public located outside the Special Facility;
  - (iv) Any office building for individuals who are not employees of a governmental unit or the operating District for the Special Facility;
  - (v) Any industrial park or manufacturing facility.
- g. 95% or more of the net proceeds of the Series 2016 Bonds are amounts paid or incurred which are chargeable to the Special Facility's capital account or would be so chargeable either with a proper election by taxpayer or but for a proper election by a taxpayer to deduct such amounts.
- h. The Lease provides that the Special Facility will serve the general public and will be available on a regular basis for general public use and will not constructed for the exclusive

use of a limited number of non-exempt persons in their trades or businesses. The Special Facility will be used as a Mass Commuting Facility as defined in Section 1.01.

i. The Special Facility includes any land, building or other property functionally related and subordinate to such facility. All such functionally related and subordinate property is of a character and size commensurate with the character and size of the Special Facility.

j. There was no substantial user of the Special Facility prior to the issuance of the Series 2016 Bonds.

k. The Lease provides that any parking lot which is part of the Special Facility will be available for use by the general public using such Special Facility. No more than an insubstantial portion thereof will be used exclusively by or for the benefit of a non-exempt person by reason of a formal or informal agreement or by reason of the remote geographic location of the facility.

l. The Special Facility constitutes a Mass Commuting Facility as defined in Section 1.01. The Special Facility may also include facilities which are functionally related and subordinate to the Special Facility or Project Site. Any such facilities are of a character and size commensurate with the character and size of the Special Facility and are located in the Special Facility which is located at 801 E. 12<sup>th</sup> Street, Tucson, Arizona 85719. The Special Facility does not provide more than minimal benefits to any other facilities.

m. The Lease provides that no portion of the Special Facility serves a system wide or regional function for Lessee or any other non-exempt person.

n. Any storage or training facility included with the Special Facility are both (i) directly related to the Special Facility, and (ii) physically located on or adjacent to such Special Facility.

o. Based on the actual cost incurred in constructing the Special Facility, it is reasonably expected that 95% of the net proceeds of the Series 2016 Bonds will be used to provide an exempt facility and for no other purpose for the entire term of the Series 2016 Bonds (disregarding any redemption provisions).

p. The Lease provides that the Lessee will not permit any sublessee to lease or otherwise provide use of the Special Facility to any non-exempt persons for use in their trade or business other than use on the same basis as the general public.

q. The primary function of the Special Facility will be as a Mass Commuting Facility as defined in Section 1.01.

r. The representations contained in any tax certificate delivered in connection with the issuance of the Series 2016 Bonds are hereby incorporated by referenced in this Section 6.13 as if fully set forth herein.

## ARTICLE VII

### THE TRUSTEE, REGISTRAR AND PAYING AGENTS

#### SECTION 7.01. Trustee's Acceptance and Responsibilities.

(a) The Trustee accepts the trusts imposed upon it by this Trust Agreement, and shall observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article, to all of which the parties hereto and the Owners agree.

(b) Prior to the occurrence of an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of Section 7.02 hereof, or of which by that paragraph the Trustee is deemed to have notice, and after the cure or waiver of all defaults or Events of Default which may have occurred,

(i) the Trustee undertakes to perform only those duties and obligations which are set forth specifically herein and no duties or obligations shall be implied to the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may rely conclusively, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements hereof; but in the case of any such certificates or opinions which by any provision hereof are required specifically to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Trust Agreement on their face.

(c) In case an Event of Default has occurred and is continuing hereunder (of which the Trustee has been notified, or is deemed to have notice), the Trustee shall exercise those rights and powers vested in it hereby and shall use the same degree of care and skill in their exercise as a prudent corporate trustee would exercise or use under the circumstances in the conduct of their corporate trust business.

(d) No provision of this Trust Agreement shall be construed to relieve the Trustee from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct, except that,

(i) this Subsection shall not be construed to affect the limitation of the duties and obligations of the Trustee provided in subparagraph (b)(i) of this Section or the right of the Trustee to rely on the truth of statements and the correctness of opinions as provided in subparagraph (b)(ii) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in principal amount of a series of the Bonds then outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Trust Agreement; and

(iv) no provision hereof shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability (including, without limitation, any and all environmental liability) in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(e) Whether or not herein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

**SECTION 7.02. Certain Rights and Bonds of the Trustee.** Except as otherwise provided in Section 7.01 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees (but shall not be answerable for the acts or omissions of such attorneys, agents or receivers appointed by it with due care), (ii) shall be entitled to the advice of counsel concerning all matters of trusts hereof and duties hereunder, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof. The Trustee may act upon the opinion or advice of an attorney (who may be the attorney or attorneys for the District) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(b) Except for its certificate of authentication on the Bonds, the Trustee shall not be responsible for:

(i) any recital herein, in the Lease or in the Bonds,

(ii) the validity, priority, recording, re-recording, filing or refiling hereof or of any Supplement or the Lease,

(iii) any instrument or document of further assurance or collateral assignment,

(iv) any financing statements, amendments thereto or continuation statements;

(v) insurance of the property subject to the Lease or collection of insurance moneys,

(vi) the validity of the execution by the District hereof, of any Supplement or instruments or documents of further assurance,

(vii) the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby,

(viii) the value of or title to the interest in the Lease, or

(ix) the maintenance of the security hereof.

The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the District under the Lease except as set forth hereinafter; but the Trustee may require of the District full information and advice as to the observance or performance of those covenants, agreements and obligations. The Trustee shall have no obligation to observe or perform any of the duties of the District under the Lease.

(c) The Trustee shall not be accountable for the application by the District or any other Person of the proceeds of any Bonds authenticated or delivered hereunder.

(d) The Trustee shall be protected, in the absence of bad faith or negligence on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, facsimile transmission, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant hereto upon the request or District or consent of any Person who is the Owner of any Bonds at the time of making the request or giving the District or consent, shall be conclusive and binding upon all future Owners of the same Bond and of Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact for which the District may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed on behalf of the District by the Chair or the Secretary as sufficient evidence of the facts recited therein. Prior to the occurrence of a default or Event of Default hereunder of which the Trustee has been notified, as provided in paragraph (f) of this Section, or of which by that paragraph the Trustee is deemed to have notice, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient provided, that the Trustee in its discretion may require and obtain any further evidence which it deems to be necessary or advisable; and, provided further, that the Trustee shall not be bound to secure any further evidence. The Trustee may accept a certificate of the officer, or an assistant thereto, having charge of the appropriate records, to the effect that legislation has been enacted by the District in the form recited in that certificate, as conclusive evidence that the legislation has been duly adopted and is in full force and effect.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default hereunder, except Events of Default described in paragraphs (a)(i) and (ii) of Section 8.01 hereof, unless a Responsible Officer of the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the District or the Owners of at least ten percent (10%) of the aggregate principal amount of Bonds then outstanding. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above.

(g) At any reasonable time, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives (i) may inspect and copy fully all books, papers and records of the District pertaining to the property subject to the Lease and the Bonds, and (ii) may make any memoranda from and in regard thereto as the Trustee may desire.

(h) The Trustee shall not be required to give any obligation or surety with respect to the execution of these trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything contained elsewhere herein, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and any corporate action and evidence thereof, in addition to that required by the terms hereof, as a condition to the authentication of any Bonds or the taking of any action whatsoever within the purview hereof, if the Trustee deems it to be desirable for the purpose of establishing the right of the District to the authentication of any Bonds or the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

(j) Before taking action hereunder pursuant to Section 7.04 or Article VIII hereof, the Trustee may require that a satisfactory indemnity obligation or other assurances be furnished to it for the reimbursement of all expenses which it may incur and to protect it against all liability (including, without limitation, any and all environmental liability) by reason of any action so taken, except liability which is adjudicated to have resulted from the Trustee's negligence or willful misconduct. Without limiting the foregoing, such other assurances may include, but shall not be limited to, environmental audits or other evidence satisfactory to the Trustee that it will not incur liability by reason of any action taken pursuant to Section 7.04 or Article VIII hereof. The Trustee may, but shall be in no event obligated to, take action without an indemnity obligation, but with assurances satisfactory to the Trustee to protect the Trustee against all environmental liability, and in that case, the District shall reimburse the Trustee for all of the Trustee's expenses pursuant to Section 7.03 hereof.

(k) Unless otherwise provided herein, all moneys received by the Trustee hereunder shall be held in trust for the purposes for which those moneys were received, until those moneys are used, applied or invested as provided herein; provided, that: those moneys need not be segregated from other moneys, except to the extent required by this Trust Agreement or by law. The Trustee shall not have any liability for interest on any moneys received hereunder, except to the extent expressly provided herein for the application of investment earnings hereunder.



(l) Any corporate act by the District, and any opinions, certificates and other instruments and documents for which provision is made herein, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and District to the Trustee for its actions taken hereunder.

(m) The Trustee agrees to accept and act upon instructions or directions pursuant to this Trust Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the District elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The District agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(n) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences. The permissive right of the Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty and the Trustee shall not be answerable for other than its gross negligence or willful default. The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds.

(o) In acting or omitting to act pursuant to the Lease or any other document or agreement contemplated in connection herewith or therewith, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Trust Agreement and the Lease, including, but not limited to, this Article VII.

**SECTION 7.03. Fees, Charges and Expenses of Trustee, Registrar and Paying Agents.**

(a) The Trustee, the Registrar and any Paying Agents shall be entitled to payment or reimbursement by the District for reasonable fees for its Ordinary Services rendered hereunder and for all out of pocket expenses, advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred by them in connection with the provision

of Ordinary Services. For purposes hereof, fees for Ordinary Services provided for by their respective standard fee schedule shall be considered reasonable. In the event that it should become necessary for any of them to perform Extraordinary Services, they shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable and necessary Extraordinary Expenses incurred in connection therewith.

(b) Without creating a default or an Event of Default hereunder, however, the District may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the reasonableness of any fee, charge or expense.

(c) The Trustee, the Registrar and any Paying Agents shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by their gross negligence or willful misconduct. The reasonable fees for their Ordinary Services and charges of the foregoing shall be entitled to payment and reimbursement. Any amounts payable to the Trustee, the Registrar or any Paying Agent pursuant to this Section 7.03 shall be payable upon demand. The fees of the Trustee and the fees, charges and expenses of the Trustee, the Registrar or any Paying Agents to which reference is made above, may be paid by the Trustee from the Bond Retirement Fund as and when those fees, charges and expenses become due. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**SECTION 7.04. Intervention by Trustee.** The Trustee may intervene on behalf of the Owners, and shall intervene if requested to do so in writing by the Owners of at least twenty-five percent (25%) of the aggregate principal amount of a series of Bonds then outstanding, in any judicial proceeding to which the District (provided that a greater percentage of such Owners has not given the Trustee a contrary direction) is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Owners of the Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity obligation be provided to it in accordance with Sections 7.01 and 7.02 hereof before it takes action hereunder.

**SECTION 7.05. Successor Trustee.**

(a) Anything herein to the contrary notwithstanding, (i) any bank, authority or association (A) into which the Trustee may be converted or merged, (B) with which the Trustee or any successor to it may be consolidated, or (C) to which it may sell or transfer its assets or its corporate trust business as a whole or substantially as a whole, or any bank, authority or association resulting from any such conversion, merger, consolidation, sale or transfer, *ipso facto*, shall be and become successor Trustee hereunder and shall be vested with all of the title to the whole property or trust estate hereunder; and (ii) that bank, authority or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Trust Agreement to be exercised by, vested in or

conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

(b) Any successor Trustee, however, (i) shall be a trust company or a bank having the powers of a trust company, (ii) shall be in good standing within the State, (iii) shall be duly authorized to exercise trust powers within the State and (iv) shall have a reported capital and surplus of not less than \$50,000,000.

#### **SECTION 7.06. Appointment of Co-Trustee.**

(a) It is the purpose of this Trust Agreement that there shall be no violation of any law of any jurisdiction (including without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that, (i) if there is litigation under this Trust Agreement or other instruments or documents relating to the Bonds and the property subject to the Lease, and in particular, in case of the enforcement hereof or thereof upon a default or an Event of Default, or (ii) if the Trustee should deem that, by reason of any present or future law of any jurisdiction, it may not (A) exercise any of the powers, rights or remedies granted herein to the Trustee, (B) hold title to the properties, in trust, as granted herein, or (C) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a co-Trustee. The following provisions of this Section are adapted to these ends.

(b) In the event that the Trustee appoints an individual or additional institution as a co-Trustee, each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Trust Agreement to be exercised by, vested in or conveyed to the Trustee shall be exercisable by, vest in and be conveyed to that co-Trustee, but only to the extent necessary for it to be so vested and conveyed and to enable that co-Trustee to exercise it. Every covenant, agreement and obligation necessary to the exercise thereof by that co-Trustee shall run to and be enforceable by it.

(c) Should any instrument or document in writing from the District reasonably be required by the co-Trustee so appointed by the Trustee for vesting and conveying more fully and certainly in and to that co-Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, but not prepared, by the District. In case any co-Trustee or a successor to it shall die, become incapable of acting, resign or be removed, all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the co-Trustee shall be exercised by, vest in and be conveyed to the Trustee, to the extent permitted by law, until the appointment of a successor to the co-Trustee.

**SECTION 7.07. Resignation by the Trustee.** The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the District,

the Registrar, any Paying Agents and the Original Purchaser of each series of Bonds then outstanding, by mailing written notice of the resignation to such parties and to the Owners as their names and addresses appear on the Register as provided herein at the close of business fifteen (15) days prior to the mailing. The resignation shall take effect upon the appointment of a successor Trustee.

**SECTION 7.08.      Removal of the Trustee.**

(a) So long as no Event of Default, and no event which upon the passage of time and the giving of notice would become an Event of Default, has occurred and is continuing, the Trustee may be removed at any time by an instrument in writing signed by the District Representative.

(b) The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the District, the Registrar and any Paying Agents and signed by or on behalf of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

(c) The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision hereof with respect to the duties and obligations of the Trustee by a court of competent jurisdiction upon the application of the District, or the Owners of not less than twenty percent (20%) in aggregate principal amount of the Bonds then Outstanding hereunder.

**SECTION 7.09.      Appointment of Successor Trustee.**

(a) If (i) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (ii) the Trustee shall be taken under control of any public officer or officers, or (iii) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the District; provided, that if a successor Trustee is not so appointed within ten (10) days after (A) a notice of resignation or an instrument or document of removal is received by the District, as provided in Sections 7.07 and 7.08 hereof, respectively, or (B) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the District shall not have appointed a successor Trustee, the Owners of a majority in aggregate principal amount of each series of Bonds then outstanding may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Owners. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 60 days of such events set forth in subclauses (i) through (iii), the Owner of any Bond outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

(b) Every successor Trustee appointed pursuant to this Section (i) shall be a trust company or a bank having the powers of a trust company, (ii) shall be in good standing within the State, (iii) shall be duly authorized to exercise corporate trust powers within the State,

(iv) shall have a reported capital and surplus of not less than \$50,000,000 and (v) shall be willing to accept the trusteeship under the terms and conditions hereof.

(c) Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor and the District, an instrument in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor or the District, the predecessor Trustee (i) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, cause of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (ii) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Notwithstanding the foregoing, the predecessor Trustee shall not be required to transfer to its successor any rights of indemnity to the predecessor Trustee for acts during the time the predecessor Trustee was acting as Trustee hereunder. Should any instrument or document in writing from the District be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the District shall execute, acknowledge and deliver that instrument or document.

(d) In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any moneys which it may hold pursuant to this Trust Agreement and shall cease to be Registrar and Paying Agent for any of the Bonds, to the extent it served in any of those capacities, and the successor Trustee shall become custodian and, if applicable, Registrar and Paying Agent.

**SECTION 7.10. Adoption of Authentication.** In case any of the Bonds shall have been authenticated, but shall not have been delivered, any successor Trustee or Registrar may adopt the certificate of authentication of any predecessor Trustee or Registrar and may deliver those obligations so authenticated as provided herein. In case any Bonds shall not have been authenticated, any successor Trustee or Registrar may authenticate those Bonds either in the name of any predecessor or in its own name. In all cases, the certificate of authentication shall have the same force and effect as provided in the Bonds or herein with respect to the certificate of authentication of the predecessor Trustee or Registrar.

**SECTION 7.11. Registrars.**

(a) Anything herein to the contrary notwithstanding, any bank, corporation or association (i) into which a Registrar may be converted or merged, (ii) with which a Registrar or any successor to it may be consolidated or (iii) to which it may sell or transfer its assets or its corporate trust business as a whole or substantially as a whole, or any bank, District or association resulting from any such conversion, merger, consolidation, sale or transfer, *ipso*

*facto*, shall be and become successor Registrar to that Registrar hereunder and shall be vested with each and every power, right, duty, obligation, discretion and privilege expressed or intended hereby to be exercised by or vested in the predecessor Registrar, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

(b) A Registrar may resign at any time by giving written notice of its resignation to the District, the Trustee, the Original Purchaser of each series of Bonds then outstanding for which it is Registrar, and to each Paying Agent for those series of Bonds, at least sixty (60) days before the resignation is to take effect. The resignation shall take effect immediately, however, upon the appointment of a successor Registrar, if the successor Registrar is appointed and accepts that appointment before the time stated in the notice.

(c) The Registrar may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Registrar, with copies thereof mailed to the District and the Trustee, and signed by or on behalf of the Owners of not less than a majority in aggregate principal amount of the Bonds then outstanding.

(d) If (i) a Registrar shall resign, shall be removed, shall be dissolved, or shall become otherwise completely incapable of acting hereunder, (ii) a Registrar shall be taken under the control of any public officer or officers, (iii) a receiver shall be appointed for a Registrar by a court, or (iv) a Registrar shall have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, commence a proceeding under any federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days, then a successor Registrar shall be appointed by the Chair, with the written consent of the District and the Trustee; provided, that if a successor Registrar is not so appointed within ten (10) days after (v) a notice of resignation or an instrument or document of removal is received by the District, as provided above, or (vi) the Registrar is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, if the Chair or the Secretary shall not have appointed a successor Registrar, the Trustee or the Owners of a majority in aggregate principal amount of Bonds then outstanding may designate a successor Registrar by an instrument or document or concurrent instruments or documents in writing signed by the Trustee, or in the case of the Owners, by or on behalf of those Owners.

(e) Every successor Registrar appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the District and the Trustee, an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests of its predecessor. Upon the written request of its successor or the District, a predecessor Registrar (i) shall execute and deliver an instrument or document transferring to its successor all of the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests of it as predecessor Registrar hereunder, and (ii) shall take any other action necessary to duly assign, transfer and deliver to its successor all property and records (including without limitation, the Register and

any cancelled Bonds) held by it as Registrar. Should any instrument or document in writing from the District be requested by any successor Registrar for vesting and conveying more fully and certainly in and to that successor the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests vested or conveyed or intended to be vested or conveyed hereby in or to a predecessor Registrar, the District shall execute, acknowledge and deliver that instrument or document.

**SECTION 7.12.      Designation and Succession of Paying Agents.**

(a) The Trustee shall be Paying Agent for the Bonds, and, with the consent of the District, the Trustee may appoint a Paying Agent or Agents with power to act on its behalf and subject to its direction in the payment of Bond Service Charges on any series of Bonds. It is the responsibility of the Trustee to establish the duties and responsibilities of any Paying Agent for any purposes hereof, to the extent not specified herein.

(b) Any bank, District or association with or into which any Paying Agent may be merged or converted or with which it may be consolidated, or any bank, District or association resulting from any merger, consolidation or conversion to which any Paying Agent shall be a party, or any bank, District or association succeeding to the corporate trust business of any Paying Agent, shall be the successor of the Paying Agent hereunder, if that successor District or association is otherwise eligible hereunder, without the execution or filing of any paper or any further act on the part of the parties hereto or the Paying Agent or that successor District or association.

(c) Any Paying Agent may at any time resign by giving written notice of resignation to the Trustee, to the Registrar, to the District. The Trustee may at any time terminate the agency of any Paying Agent by giving written notice of termination to such Paying Agent, to the Registrar, to the District. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Paying Agent shall cease to be eligible under this Section, the Trustee, with the consent of the District, may appoint a successor Paying Agent. The Trustee shall give written notice of appointment of a successor Paying Agent to the District and the Registrar and shall mail, within ten (10) days after that appointment, notice thereof to all Owners as their names and addresses appear on the Register on the date of that appointment.

(d) The District shall pay to any Paying Agent from time to time reasonable compensation as authorized in Section 7.03 hereof for its services.

(e) The provisions of Sections 3.05 and 7.02(d) hereof shall be applicable to any Paying Agent.

**SECTION 7.13.      Dealing in Bonds.** The Trustee, a Registrar and a Paying Agent, their affiliates, and any directors, officers, employees or agents thereof may become the owners of Bonds secured hereby with the same rights which it or they would have hereunder if the Trustee, the Registrar or Paying Agents did not serve in those capacities.

**SECTION 7.14.      Representations, Agreements and Covenants of Trustee.**

The Trustee hereby represents that it is a national banking association organized and existing under the laws of the United States or qualified to do business in the State of Arizona and authorized to exercise corporate trust powers in the State, is in good standing, and that it has an unimpaired reported capital and surplus of not less than \$50,000,000. The Trustee covenants that it shall take such action, if any, as is necessary to remain in good standing and duly authorized to exercise corporate trust powers in the State, and that it will maintain an unimpaired reported capital and surplus of not less than \$50,000,000. The Trustee shall observe and perform the duties and obligations of the Trustee to which reference is made herein and any other instrument or document providing security for any of the Bonds to which it is a party or of which it is an assignee.

**ARTICLE VIII**

**DEFAULT PROVISIONS AND REMEDIES  
OF TRUSTEE AND OWNERS**

**SECTION 8.01.      Defaults; Events of Default.**

(a) The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default hereunder:

(i) Payment of any interest on any Bond shall not be made when and as that interest shall become due and payable;

(ii) Payment of the principal of or any premium on any Bond shall not be made when and as that principal or premium shall become due and payable, whether at stated maturity, by redemption, or otherwise;

(iii) Failure by the District to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained herein or in the Bonds, which failure shall have continued for a period of thirty (30) days after written notice of such failure, by registered or certified mail, shall have been given to the District, requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Owners of not less than twenty-five percent (25%) in aggregate principal amount of any series of Bonds then outstanding (provided that a greater percentage of such Owners has not given the Trustee a contrary direction);

(iv) The occurrence and continuance of any default as defined in the Lease;

(v) The occurrence of an Event of Bankruptcy as to the District or Greyhound shall: (A) commence a proceeding under any federal or state insolvency, reorganization or similar law, or have such a proceeding commenced



against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days; or (B) have a receiver, conservator, liquidator or trustee appointed for it or for the whole or any substantial part of its property. The declaration of an Event of Default under this subsection and the exercise of remedies upon any such declaration shall be subject to any applicable limitations of federal or State law affecting or precluding such declaration or exercise during the pendency of or immediately following any liquidation or reorganization proceedings.

(b) The term "default" or "failure" as used in this Article means a default or failure by the District in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained herein or in the Bonds, exclusive of any period of grace or notice required to constitute a default or failure an Event of Default, as provided above.

**SECTION 8.02. Notice of Default.** If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the District, the Registrar, any Paying Agent, and the Original Purchaser of each series of Bonds, within five (5) Business Days after the Trustee has notice of the Event of Default. If an Event of Default occurs of which the Trustee has notice pursuant hereto, the Trustee shall give written notice thereof, promptly after the receipt of the Trustee of notice of its occurrence to the Owners of all Bonds then outstanding as shown by the Bond Register at the close of business fifteen (15) days prior to the mailing of that notice; provided that, except in the case of an Event of Default pertaining to the payment of the principal of or any premium or interest on any Bond or the occurrence of an Event of Bankruptcy as to the District, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or responsible officers of the Trustee in good faith determine that the withholding of notice to the Owners is in the interests of the Owners.

**SECTION 8.03. Remedies; Rights of Owners.**

(a) Upon the occurrence and continuance of an Event of Default, and subject to the provisions of Section 8.10 hereof, the Trustee may pursue any available remedy, including *mandamus*, to enforce the payment of Bond Service Charges or the observance and performance of any other covenant, agreement or obligation hereunder, the Lease or any other instrument providing security, directly or indirectly, for the Bonds.

(b) Upon the occurrence and continuance of an Event of Default, if the Trustee is requested so to do by the Owners of at least twenty-five percent (25%) in aggregate principal amount of each series of Bonds outstanding (provided that a greater percentage of such Owners has not given the Trustee a contrary direction), the Trustee (subject to the provisions of Sections 7.01 and 7.02 hereof, particularly subsections 7.01(d)(iv), 7.02(d) and 7.02(j) of those Sections) shall exercise any rights and powers conferred by this Section.

(c) No remedy conferred upon or reserved to the Trustee (or to the Owners) hereby is intended to be exclusive of any other remedy. Each remedy shall be cumulative and

shall be in addition to every other remedy given hereunder or otherwise to the Trustee or to the Owners or now or hereafter existing.

(d) Upon the occurrence and continuance of an Event of Default, or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the Acquisition and Construction Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Series 2016 Bonds.

(e) No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

(f) No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Owners, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

(g) As the assignee of all right, title and interest of the District in and to the Lease, the Trustee is empowered to enforce each remedy, right and power granted to the District under the Lease. In exercising any remedy, right or power thereunder or hereunder, the Trustee shall take any action which would best serve the interests of the Owners, applying the standards described in, and subject to the provisions of, Sections 7.01 and 7.02 hereof. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Owner of Bonds any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Owner of Bonds thereof, or to authorize the Trustee to vote in respect of the claim of any Owner of Bonds in any such proceeding without the approval of the Owners of Bonds so affected.

(h) Notwithstanding any Event of Default hereunder, the Bonds shall not be subject to acceleration for any reason.

**SECTION 8.04. Right of Owners to Direct Proceedings.** Subject to the provisions of Section 8.10 hereof, the Owners of a majority in aggregate principal amount of each series of Bonds then outstanding shall have the right at any time to direct, by an instrument or document or instruments or documents in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions hereof or of any other proceedings hereunder; provided, that (i) any direction shall not be other than in accordance with the provisions of law and hereof, (ii) the Trustee shall be indemnified as provided in Sections 7.01 and 7.02 hereof, and (iii) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction.

**SECTION 8.05.      Application of Moneys.**

(a) After payment of any fees, costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of moneys pursuant to any right given or action taken under the provisions of this Article or the Lease (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article VIII), all moneys received by the Trustee shall be deposited in the Bond Retirement Fund and shall be applied as follows, subject to any provision made pursuant to Sections 3.10 or 5.10 hereof:

First -- To the payment to the Owners entitled thereto of all installments of interest then due on the Bonds, in the order of the due dates of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Owners entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second -- To the payment to the Owners entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds previously called for redemption for the payment of which moneys are held pursuant to the provisions hereof), whether at stated maturity, by redemption or pursuant to any mandatory sinking fund requirements, in the order of their due dates, beginning with the earliest due date, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Owners entitled thereto, without any discrimination or privilege.

Third – To the restoration of the Reserve Fund to the Reserve Requirement.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, those moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of moneys available for application and the likelihood of additional moneys becoming available for application in the future. Whenever the Trustee shall direct the application of those moneys, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the moneys are available therefor. The Trustee shall give notice of the deposit with it of any moneys and of the fixing of that date, all consistent with the requirements of Section 3.05 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of and any premium on a Bond to the Owner thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid in full.

**SECTION 8.06.      Remedies Vested in Trustee.** All rights of action (including without limitation, the right to file proof of claims) hereunder or under any of the

Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Owners as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Owners of the outstanding Bonds, subject to the provisions hereof.

**SECTION 8.07. Rights and Remedies of Owners.**

(a) An Owner shall not have any right to institute any suit, action or proceeding for the enforcement hereof, for the execution of any trust hereof, or for the exercise of any other remedy hereunder, unless:

(i) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of Section 7.02 hereof, or of which it is deemed to have notice under that paragraph;

(ii) the Owners of at least twenty-five percent (25%) in aggregate principal amount of a series of Bonds then outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 7.01 and 7.02 hereof; and

(iii) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent, in every case, to the institution of any suit, action or proceeding described above.

(b) No one or more Owners of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit hereof by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided herein for the benefit of the Owners of all Bonds then outstanding. However, nothing herein shall affect or impair the right of any Owner to enforce the payment of the Bond Service Charges on any Bond owned by that Owner at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

(c) Notwithstanding any Event of Default hereunder, the Bonds shall not be subject to acceleration for any reason.

**SECTION 8.08. Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any remedy, right or power hereunder in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for

any reason, or shall have been determined adversely to the Trustee, the District, the Trustee and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

**SECTION 8.09. Waivers of Events of Default.**

(a) Except as hereinafter provided, at any time, in its discretion, the Trustee may waive any Event of Default hereunder and its consequences. The Trustee shall do so upon the written request of:

(i) the Owners of at least a majority in aggregate principal amount of all Bonds then outstanding in respect of which an Event of Default in the payment of Bond Service Charges exists; or

(ii) the Owners of at least twenty-five percent (25%) in aggregate principal amount of each series of Bonds then Outstanding, in the case of any other Event of Default.

(b) However, there shall not be waived any Event of Default described in Section 8.01(a)(i), (ii) or (v) hereof. In the case of the waiver or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the District, the Trustee and the Owners shall be restored to their former positions and rights hereunder, respectively. No waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

**SECTION 8.10. No Remedy Against Project Site or Special Facility.** Neither the Trustee nor the Owners shall have any right to foreclose upon the interest of Greyhound or the District in and to the Project Site or the Special Facility, terminate the Lease or in any way interfere with the continued use and enjoyment of the Project Site and the Special Facility by Greyhound.

**ARTICLE IX**

**SUPPLEMENTS**

**SECTION 9.01. Supplements Generally.** The District and the Trustee may enter into indentures supplemental hereto as provided in this Article and pursuant to the other provisions therefor in this Trust Agreement.

**SECTION 9.02. Supplements Not Requiring Consent of Owners.** Without the consent of, or notice to, any of the Owners, the District and the Trustee may enter into indentures supplemental hereto which shall not, in the opinion of the District, be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

(i) to cure any ambiguity, inconsistency or formal defect or omission herein;

(ii) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or District that lawfully may be granted to or conferred upon the Owners or the Trustee;

(iii) to assign additional revenues hereunder:

(iv) to accept additional security and instruments and documents of further assurance with respect to the Bonds;

(v) to add to the covenants, agreements and obligations of the District hereunder, other covenants, agreements and obligations to be observed for the protection of the Owners, or to surrender or limit any right, power or District reserved to or conferred upon the District herein, including without limitation, the limitation of rights of redemption so that in certain instances Bonds of different series will be redeemed in some prescribed relationship to one another for the protection of the Owners of a particular series of Bonds;

(vi) to evidence any succession to the District and the assumption by its successor of the covenants, agreements and obligations of the District hereunder, under the Lease and the Bonds;

(vii) to make necessary or advisable amendments or additions in connection with the issuance of Additional Bonds in accordance with Section 2.04 hereof, provided such amendments or additions do not materially adversely affect the interests of Owners of outstanding Bonds, as evidenced by the opinion of counsel delivered to it under Section 9.05 hereof;

(viii) to permit the use of a book-entry system to identify the owner of an interest in an obligation issued by the District hereunder, whether that obligation was formerly, or could be, evidenced by a tangible security;

(ix) to permit the Trustee to comply with any obligations imposed upon it by law;

(x) to specify further the duties and responsibilities of, and to define further the relationship among, the Trustee, the Registrar and any Paying Agents;

(xi) to achieve compliance of this Trust Agreement with any applicable federal securities or tax law;

(xii) to permit the use of a Qualified Surety Bond to satisfy all or a portion of the Reserve Requirement; and

(xiii) to permit any other amendment which, in the opinion of nationally recognized bond counsel, is not to the material prejudice of the Owners.

The provisions of Subsections 9.02(ix) and (xi) shall not be deemed to constitute a waiver by the Trustee, the Registrar, the District or any Owner of any right which it may have in the absence of those provisions to contest the application of any change in law to this Trust Agreement or the Bonds.

**SECTION 9.03. Supplements Requiring Consent of Owners.**

(a) Exclusive of Supplements to which reference is made in Section 9.02 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of each series of Bonds at the time Outstanding, evidenced as provided herein, the District and the Trustee may execute and deliver Supplements adding any provisions to, changing in any manner or eliminating any of the provisions hereof or of any Supplement or restricting in any manner the rights of the Owners. Nothing in this Section or Section 9.02 hereof shall permit, however, or be construed as permitting:

(i) without the consent of the Owner of each Bond so affected, (A) extension of the maturity of the principal of or the interest on any Bond, (B) reduction in the principal amount of any Bond or the rate of interest or premium thereon, or (C) reduction in the amount or extension of the time of payment of any mandatory redemption requirements, or

(ii) without the consent of the Owners of all Bonds then outstanding, (A) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (B) a reduction in the aggregate principal amount of the Bonds required for consent to a supplement.

(b) If the District shall request that the Trustee execute and deliver any Supplement for any of the purposes of this Section, upon being satisfactorily indemnified with respect to its expenses in connection therewith, the Trustee shall cause notice of the proposed execution and delivery of the Supplement to be mailed by first class mail, postage prepaid, to all Owners of Bonds then outstanding at their addresses as they appear on the registration books at the close of business on the fifteenth (15th) day preceding that mailing.

(c) The Trustee shall not be subject to any liability to any Owner by reason of the Trustee's failure to mail, or the failure of any Owner to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplement when there has been consent thereto as provided in this Section. The notice shall state briefly the nature of the proposed Supplement and shall state that copies thereof are on file at the principal **corporate trust office** of the Trustee for inspection by all Owners.

(d) If the Trustee shall receive, within a period prescribed by the District, of not less than sixty (60) days, but not exceeding one (1) year, following the mailing of the notice, an

instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Owners of not less than a majority in aggregate principal amount of each series of Bonds then outstanding (which instrument or document or instruments or documents shall refer to the proposed Supplement in the form described in the notice and specifically shall consent to the Supplement in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplement in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Owner, regardless of whether that Owner shall have consented thereto.

(e) Any consent shall be binding upon the Owner of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Owner of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Owner has notice of the consent to the Supplement). A consent may be revoked in writing, however, by the Owner who gave the consent or by a subsequent Owner of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplement. At any time after the Owners of the required percentage of Bonds shall have filed their consents to the Supplement, the Trustee shall make and file with the District a written statement that the Owners of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that consent has been so filed.

(f) If the Owners of the required percentage in aggregate principal amount of Bonds outstanding shall have consented to the Supplement, as provided in this Section, no Owner shall have any right (i) to object to (A) the execution or delivery of the Supplement, (B) any of the terms and provisions contained therein, or (C) the operation thereof, (ii) to question the propriety of the execution and delivery thereof, or (iii) to enjoin or restrain the Trustee or the District from that execution or delivery or from taking any action pursuant to the provisions thereof.

#### **SECTION 9.04. Authorization to Trustee; Effect of Supplement.**

(a) The Trustee is authorized to join with the District in the execution and delivery of any Supplement in accordance with this Article and to make the further agreements and stipulations which may be contained therein. Thereafter,

(i) That Supplement shall form a part hereof;

(ii) All terms and conditions contained in that Supplement as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions hereof for any and all purposes;

(iii) This Trust Agreement shall be deemed to be modified and amended in accordance with the Supplement; and

(iv) The respective rights, duties and obligations hereunder of the District, the Trustee, the Registrar, the Paying Agents and all Owners of Bonds then



outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplement.

(b) Express reference to any executed and delivered Supplement may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the Trustee or the District. A copy of any Supplement for which provision is made in this Article, except a Supplement described in clause (vii) of Section 9.02 hereof, shall be mailed by the Trustee to the Registrar, each Paying Agent and the Original Purchaser of each series of Bonds affected thereby. The Trustee shall not be required to execute any Supplement containing provisions adverse to the Trustee.

**SECTION 9.05. Opinion of Counsel.** The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that: (i) any proposed Supplement complies with the provisions hereof and (ii) it is proper for the Trustee to join in the execution of that Supplement under the provisions of this Article. That counsel may be bond counsel for the District.

**SECTION 9.06. Modification by Unanimous Consent.** Notwithstanding anything contained elsewhere herein, the rights and obligations of the District and the Owners, and the terms and provisions of the Bonds and this Trust Agreement or any Supplement, may be modified or altered in any respect with the consent of (i) the District, (ii) the Owners of all of the Bonds then outstanding, and (iii) the Trustee.

**SECTION 9.07. Notice to Rating Agencies.** No Supplement may be entered into without 15 days advance written notice to any rating agency then rating the Bonds. Following the execution and delivery of the Supplement, a transcript of the proceedings with respect thereto shall be mailed to such rating agencies.

**SECTION 9.08. Amendment of Lease.** The Trustee may join in the amendment of the Lease.

## ARTICLE X

### DEFEASANCE

**SECTION 10.01. Release of Trust Agreement.**

(a) If (i) the District shall pay all of the outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Owners of the outstanding Bonds, all Bond Service Charges due or to become due thereon, and (ii) provision also shall be made for the payment of all other sums payable hereunder and under the Lease, then this Trust Agreement shall cease, determine and become null and void (except for those provisions surviving by reason of Section 10.03 hereof in the event the Bonds are deemed paid and

discharged pursuant to Section 10.02 hereof), and the covenants, agreements and obligations of the District hereunder shall be released, discharged and satisfied.

(b) Thereupon, and subject to the provisions of Section 10.03 hereof, if applicable:

(i) the Trustee shall release this Trust Agreement (except for those provisions surviving by reason of Section 10.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 10.02 hereof), and shall execute and deliver to the District any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the District; and

(ii) the Trustee and any other Paying Agents shall, upon the request of the District and provision of assignment documents prepared by or on behalf of the District to the Trustee, assign and deliver to the District any property subject at the time to the lien hereof which then may be in their possession, except amounts in the Bond Retirement Fund required to be held by the Trustee and the Paying Agents under Sections 5.09 and 5.10 hereof or otherwise for the payment of Bond Service Charges.

#### **SECTION 10.02. Payment and Discharge of Bonds.**

(a) All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning hereof, including without limitation, Section 10.01 hereof, if:

(i) the Trustee as Paying Agent and any Paying Agents shall have received, in trust for and irrevocably committed thereto, sufficient moneys, or

(ii) the Trustee shall have received, in trust for and irrevocably committed thereto, noncallable Defeasance Obligations which are certified by an independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any moneys to which reference is made in subparagraph (i) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Service Charges on those Bonds, at their maturity or redemption dates, as the case may be, or if a default in payment shall have occurred on any maturity or redemption date, then for the payment of all Bond Service Charges thereon to the date of the tender of payment; provided, that if any of those Bonds are to be redeemed prior to the maturity thereof, notice of that redemption shall have been duly given or irrevocable provision satisfactory to the Trustee shall have been duly made for the giving of that notice.

(iii) and, with respect to the payment and discharge of the Series 2016 Bonds, the District, and Trustee shall have received (1) a report of an independent firm of nationally recognized certified public accountants verifying the sufficiency of the escrow established to pay the Series 2016 Bonds in full on the maturity or redemption date in form and substance acceptable to the District and Trustee, (2) an Escrow Deposit Agreement, (3) an opinion of nationally recognized special counsel to the effect that the Series 2016 Bonds are no longer "Outstanding" under the Trust Agreement in form and substance acceptable to the District and Trustee, and (4) a certificate of discharge of the Trustee with respect to the Series 2016 Bonds.

(b) Any moneys held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Defeasance Obligations having maturity dates, or having redemption dates which, at the option of the owner of those obligations, shall be not later than the date or dates at which moneys will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 5.04 hereof for transfers of amounts remaining in the Bond Retirement Fund.

(c) If any Bonds shall be deemed paid and discharged pursuant to this Section, then within fifteen (15) days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Owner as shown on the Register on the date on which such Bonds are deemed paid and discharged.

(d) If a forward supply contract is employed in connection with a defeasance described in paragraph (a)(ii) of this Section, (i) such accountant's verification shall expressly state the adequacy of the trust to accomplish the defeasance relies solely on the cash and the initial Defeasance Obligations and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (ii) the applicable deposit or trust agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the deposit or trust agreement and this Trust Agreement the terms of the deposit or trust agreement and this Trust Agreement shall be controlling. If the Bonds are insured by a bond insurer, the bond insurer will receive a draft of any forward supply contract at least ten (10) days prior to its execution and will be able to make comments thereon to the Trustee.

**SECTION 10.03. Survival of Certain Provisions.** Notwithstanding the foregoing, any provisions of the Bond Resolution and this Trust Agreement which relate to the maturity of Bonds, interest payments and dates thereof, optional and mandatory redemption provisions, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of moneys in trust and the duties of the Trustee, the Registrar and the Paying Agents, the payment or reimbursement for fees, charges and advances owed to, Trustee, the Registrar and the Paying Agents in connection with all the foregoing, and indemnities to the Trustee, the Registrar

and the Paying Agents shall remain in effect and be binding upon the Trustee, the Registrar, the Paying Agents, the District and the Owners notwithstanding the release and discharge hereof. The provisions of this Article shall survive the release, discharge and satisfaction hereof.

## ARTICLE XI

### COVENANTS OF THE DISTRICT AND LIMITATION OF LIABILITY

**SECTION 11.01. Prompt Payment.** The District shall promptly pay or cause to be paid the principal of and the interest on every Bond issued under the provisions hereof at the place, on the dates and in the manner provided herein and in the Bonds.

**SECTION 11.02. No Extension of Time for Interest Payment.** In order to prevent any accumulation of interest payments after maturity, the District shall not, directly or indirectly, extend or assent to the extension of the time for the payment of any claim for interest in any of the Bonds, and shall not, directly or indirectly, be a party to or approve of any such arrangement.

**SECTION 11.03. Maintenance of Offices for Payment.** So long as the Bonds or any of them shall be outstanding, the District shall cause offices or agencies where the Bonds may be presented for payment to be maintained in the \_\_\_\_\_, or at the office of the Trustee as provided in the form of the Bond.

**SECTION 11.04. Compliance with the Lease.** While any Bonds are outstanding hereunder, the District covenants and agrees with the Owners of the Bonds to perform all obligations and duties imposed on the District under the Lease.

**SECTION 11.05. Records and Accounts.** The District shall keep or cause to be kept proper books of record and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocation and application of the revenues accruing to the trust and the amounts thereof forwarded to the Trustee, and such books shall be available for inspection by the Owner of any of the Bonds at reasonable hours and under reasonable conditions.

**SECTION 11.06. Payment Records.** As long as the Lease is in effect, the Trustee (a) shall keep the financial records of Greyhound pertaining to the Rent payments made by Greyhound pursuant to the Lease and payments made on the Bonds; (b) shall make such records available for inspection by the Owners of any of the Bonds at reasonable hours during its normal business hours and under reasonable conditions; (c) shall prepare an annual account statement covering receipts, disbursements, allocations and application of revenues for such fiscal year accruing to the trust which shall be the statement generated from its trust accounting system; and (d) shall furnish a copy of each such statement to each Owner of any of the Bonds who may so request.

**SECTION 11.07. Payments of Trustee, Paying Agent Fees.** The District covenants that, except as otherwise provided for herein, all charges made by the Trustee, the Registrar and any Paying Agents for services rendered and for payment of principal of and interest on the Bonds, shall be paid by the District from revenues of the trust estate and shall not be required to be paid by the Owners of the Bonds.

**SECTION 11.08. Authority of District.**

(a) The District is, at the date of the execution and delivery hereof, or shall be, possessed of the trust estate; the Lease is, at the date of the delivery hereof, a valid and subsisting agreement for the leasing to Greyhound of the property which it purports to lease; the Lease was lawfully made by Greyhound and the District; the covenants contained in the Lease are binding; the District has good right, full power and lawful District to grant, bargain and assign, and to transfer in trust, convey and pledge the trust estate in the manner and form herein provided; and the District forever shall warrant and defend the title to the same to the Trustee against the claims of all persons whomsoever, subject to rights of Greyhound referred to hereinabove.

(b) The District shall not, without the written consent of Greyhound, alter, modify or cancel, or agree or consent to alter, modify or cancel the Lease or any other agreements heretofore or hereafter entered into by the District which relate to or affect the security of the Bonds issued hereunder. With the written consent of Greyhound, the District may consent to alterations and modifications thereof, provided that no such alterations or modifications will decrease the amounts available for payment of the Bonds or will render the income of the District or the interest on the Bonds taxable to the recipient, and provided further that prior to giving its consent with respect to an alteration or modification of the Lease, Greyhound shall obtain an opinion of counsel or financial consultant selected by Greyhound that the proposed alteration or modification will not be materially adverse to the interests of the Bond Owners, will not decrease the amounts available for payment of the Bonds and will not render the income of the District or the interest on the Bonds taxable under the income tax laws of the United States of America. Additional Bonds or other obligations secured by Lease Revenues within the limitations of Section 6.05 herein shall not be deemed to have decreased the amounts available for payment of the Bonds, nor shall agreements supplemental to or independent of the Lease, under which such Additional Bonds or obligations are to be issued, be deemed alterations or modifications of the Lease so as to require consent of the Trustee. The District shall comply with all the terms and provisions of said documents and shall not engage in any activities or take any action which might result in the income of the District becoming taxable to it, or any interest payment on the Bonds becoming taxable to the recipient thereof, under the income tax laws of the United States.

**SECTION 11.09. Maintenance of Existence.** The District further covenants and agrees as follows:

First: Whenever and so often as requested so to do by the Trustee (who has no duty to make such requests) or any Bond Owner, to promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and to promptly do or cause to be done all such other

and further things, as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Bond Owners all rights, interest, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by this Trust Agreement.

Second: To promptly, upon the request of the Trustee (who has no duty to make such requests) or any Bond Owner, from time to time take such actions as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the trust estate or any part thereof, whether now existing or hereafter developing, and to prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and to indemnify and save the Trustee and every such Bond Owner harmless from all loss, cost, damage and expense, including attorneys' fees, which they or either of them may incur by reason of any such defect, cloud, suit, action or proceedings.

Third: To maintain its existence as a multipurpose facilities district organized and existing under the laws of the State.

**SECTION 11.10. Rights and Enforcement of the Lease.** The Trustee may enforce, in its name or in the name of the District, all rights of the District for and on behalf of the Owners, and may enforce all covenants, agreements and obligations of the District under and pursuant to the Lease, regardless of whether the District is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. However, the District shall do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Lease and shall take all actions within its District to keep the Lease in effect in accordance with the terms thereof.

**SECTION 11.11. Good Title.** The District has or shall acquire and, so long as any Bonds are outstanding hereunder, shall retain good title to the trust estate.

**SECTION 11.12. Possession.** There shall be no default hereunder, but until default shall be made by the District, as provided for herein, the District shall, subject to the Lease, be entitled to possess, manage, operate, use and enjoy the property herein encumbered.

**SECTION 11.13. Limited Liability of the District.** Except for the payment of rental payments and the performance of the other covenants and agreements of the District contained in the Lease and this Trust Agreement, the District shall have no pecuniary obligation or liability to any party or to any Owner with respect hereto or the terms, execution, delivery or transfer of the Bonds, or the distribution of rental payments to the Owners by the Trustee.

**SECTION 11.14. No Liability of the District for Trustee Performance.** The District shall not have any obligation or liability to any of the other parties or to the Owners of the Bonds with respect to the performance by the Trustee of any duty imposed upon it hereunder; nor shall the Trustee have any obligation or liability to any of the other parties or to

the Owners of the Obligations with respect to the performance by the District of any duty imposed upon it hereunder.

**SECTION 11.15. Limitation of Rights to Parties and Bond Owners.**

Nothing in this Trust Agreement or in the Bonds expressed or implied is intended or shall be construed to give any person other than the District, the Trustee and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect hereto or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of District, the Trustee and said Owners.

**SECTION 11.16. Extent of Covenants; No Personal Liability.**

All covenants, stipulations, obligations and agreements of the District contained herein are and shall be deemed to be covenants, stipulations, obligations and agreements of the District to the full extent authorized by law. No covenant, stipulation, obligation or agreement of the District contained in this Trust Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the District or the Board of Directors in other than that person's official capacity. Neither the members of the Board of Directors nor any official executing the Bonds, this Trust Agreement, the Lease or any amendment or supplement hereto or thereto shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance or execution hereof or thereof.

## ARTICLE XII

### DAMAGE OR DESTRUCTION; CONDEMNATION

**SECTION 12.01. Damage or Destruction.** If all or any part of the Special Facility is damaged or destroyed by fire, flood or other casualty, but to such an extent that the Special Facility remains substantially suitable as a Mass Commuting Facility, the District shall repair the Special Facility. In the event that such damage or destruction is of such an extent as would substantially and adversely affect the Special Facility as a Mass Commuting Facility and repairing and rebuilding the Special Facility would result or does result in Greyhound being denied effective use of the Special Facility ("Destroyed"), then the District and Greyhound shall decide within 120 days thereafter whether to rebuild the Special Facility or redeem the Series 2016 Bonds pursuant to Section 4.02(a)(v) herein. If the District and Greyhound decide to rebuild the Special Facility, the District shall rebuild the Special Facility with reasonable diligence to the condition immediately before such loss.

**SECTION 12.02. Condemnation.** In the event all or part of the Special Facility is appropriated or taken under the power of eminent domain or sold under threat thereof (all of which will be referred to as being "Condemned"), in whole or in part, by any public or quasi-public authority, and Greyhound shall decide within 120 days thereafter such taking or sale that such taking or sale has substantially and adversely affected the Special Facility as a Mass Commuting Facility, the District shall redeem the Series 2016 Bonds in whole or in part pursuant to Section 4.02(a)(v) herein.

## ARTICLE XIII

### MISCELLANEOUS

**SECTION 13.01. Severability.** In case any section or provision hereof, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken hereunder, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision hereof or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken hereunder, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

Any illegality, invalidity or in-operability shall not affect any legal, valid and operable section, action, covenant, agreement, stipulation, obligation, act, provision, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.



**SECTION 13.02.     Notices.**

(a) Except as provided in Section 8.02 hereof, it shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is duly mailed by first class mail. Notices to the District and the Trustee shall be addressed as follows:

(i) If to the District:

Rio Nuevo Multipurpose Facilities District  
400 West Congress, Suite 152  
Tucson, Arizona 85701  
Attention: Fletcher McCusker, Chairman

(ii) With copy to:

Gust Rosenfeld P.L.C.  
One East Washington, Suite 1600  
Phoenix, Arizona 85004-2553  
Attention: Timothy A. Stratton

(v) Except as provided in Section 7.02(f) hereof, if to the Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(vi) If to the Original Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the District, the Trustee, the Original Purchaser to one or either of the others also shall be given to the others. By notice given hereunder, the foregoing parties may designate any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent. The Trustee shall designate, by notice to the District and the Original Purchaser, the addresses to which notices or copies thereof shall be sent to the Registrar and the Paying Agents.

(b) In connection with any notice mailed pursuant to the provisions of this Trust Agreement, a certificate of the Trustee, the District, the Registrar, the Original Purchaser or the Owners of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

**SECTION 13.03. Suspension of Mail.** If because of the suspension of delivery of first class mail or, for any other reason, the Trustee shall be unable to mail by the required class of mail any notice required to be mailed by the provisions hereof, the Trustee shall give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Trust Agreement shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

**SECTION 13.04. Payments Due on Non-Business Days.** If any Interest Payment Date, date of maturity of the principal of any Bonds, or date fixed for redemption of any Bonds is not a Business Day, then payment of interest, principal and any redemption premium need not be made by the Trustee or any Paying Agent on that date, but that payment may be made on the next succeeding Business Day with the same force and effect as if that payment were made on the Interest Payment Date, date of maturity or date fixed for redemption, and no interest shall accrue for the period after that date.

**SECTION 13.05. Instruments of Owners.**

(a) Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required hereunder to be executed by any Owner may be in any number of concurrent writings of similar tenor and may be executed by that Owner in person or by an agent or attorney appointed in writing. Proof of (i) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (ii) the execution of any writing appointing any agent or attorney, and (iii) the ownership of Bonds, shall be sufficient for any of the purposes hereof, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

(1) The fact and date of the execution by any person of any writing may be proved by the certificate of any officer in any jurisdiction, who has power by law to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged that execution before that officer, or by affidavit of any witness to that execution; and

(2) The fact of ownership of Bonds shall be proved by the Bond Register maintained by the Registrar.

(b) Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein

which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Owner of any Bond shall bind every future Owner of the same Bond, with respect to anything done or suffered to be done by the District, the Trustee, the Registrar or any Paying Agent pursuant to that writing.

**SECTION 13.06. Priority of this Trust Agreement.** Except as provided herein, his Trust Agreement shall be superior to any liens which may be placed upon the Lease Revenues or any other funds created pursuant hereto.

**SECTION 13.07. Extent of Covenants; No Personal Liability.** All covenants, stipulations, obligations and agreements of the District contained herein are and shall be deemed to be covenants, stipulations, obligations and agreements of the District to the full extent authorized by the Act and permitted by the Constitution and laws of the State. No covenant, stipulation, obligation or agreement of the District contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the District or the Board of Directors in other than that person's official capacity. Neither the members of the Board of Directors nor any official executing the Bonds, this Trust Agreement, the Lease or any amendment or supplement hereto or thereto shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance or execution hereof or thereof.

**SECTION 13.08. Cancellation.** To the extent applicable by provision of law, all parties acknowledge that this Trust Agreement is subject to cancellation pursuant to A.R.S. Section 38-511, as amended, the provisions of which are incorporated herein.

**SECTION 13.09. Binding Effect.** This Trust Agreement shall inure to the benefit of and shall be binding upon the District and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein.

**SECTION 13.10. Counterparts.** This Trust Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**SECTION 13.11. Governing Law.** This Trust Agreement and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

**SECTION 13.12. E-Verify Requirements.** To the extent applicable under A.R.S. Section 41-4401, the Trustee and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. Section 23-214(A). The Trustee or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of this Trust Agreement and may result in the termination of the Trustee's services by the District pursuant to Section 7.08 hereof. The District retains the legal right to randomly inspect the papers and records of the Trustee or its subcontractor employee who work on this Trust Agreement to ensure that the Trustee and its subcontractors are complying with the above-mentioned warranty.

The Trustee and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the District. The Trustee and its subcontractors shall cooperate with the District's random inspections including granting the District entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

**SECTION 13.13. No Boycott of Israel.** Pursuant to A.R.S. §35-393 et seq., the Trustee certifies that it is not currently engaged in, and for the duration of this Trust Agreement will not engage in, a boycott of Israel. The term "boycott" has the meaning set forth in A.R.S. §35-393.

**IN WITNESS WHEREOF**, the District has caused this Trust Agreement to be executed and delivered for it and in its name and on its behalf by its duly authorized officers; in token of its acceptance of the trusts created hereunder, the Trustee has caused this Trust Agreement to be executed and delivered for it and in its name and on its behalf by its duly authorized officer; and in token of its acceptance of the duties and obligations of the Registrar hereunder, the Registrar has caused this Trust Agreement to be executed and delivered for it and in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

**RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT**

ATTEST:

By \_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary/Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
District Counsel

**GREYHOUND LINES, INC.**

By \_\_\_\_\_  
Representative

\_\_\_\_\_, as Trustee  
and Registrar

By \_\_\_\_\_  
Vice President

APPROVED AS TO FORM:

\_\_\_\_\_  
Bond Counsel

**EXHIBIT A**

REGISTERED  
NO. R-

REGISTERED  
\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF ARIZONA  
RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT  
LEASE REVENUE BOND, SERIES 2016 (GREYHOUND PROJECT)**

Interest Rate

Maturity Date

Issue Date

July 1, 20\_\_\_\_, 2016

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_)

Rio Nuevo Multipurpose Facilities District, a multipurpose facilities district authorized under the laws of the State of Arizona (hereinafter referred to as the "*District*"), for value received, hereby promises to pay to the Registered Owner (named above), or registered assigns, the Principal Amount (stated above) on the aforesaid Maturity Date, unless this bond is subject to prior redemption and is redeemed prior to its maturity date and payment provided therefor, and to pay interest on the Principal Amount at the interest rate shown above. Interest is payable on January 1 and July 1 of each year, commencing \_\_\_\_\_ 1, 2017 (each an "*Interest Payment Date*"), from the date of this bond to its maturity, or until redeemed if redeemed prior to maturity.

The Principal Amount of, and interest on, this bond and premium, if any, is payable to the registered owner in accordance with the rules and regulations of the Depository or to any other registered owner hereof, as shown on the registration books for this series maintained by \_\_\_\_\_ (the "*Trustee*"), at the address appearing therein at the close of business on the 15th day of the calendar month next preceding that interest payment date (the "*Regular Record Date*"). Any interest which is not timely paid or duly provided for shall cease to be payable to the person who was shown as the registered owner hereof (or of one or more predecessor bonds) on the Regular Record Date, but shall be payable to the registered owner hereof (or of one or more predecessor bonds) at the close of business on a special record date to be fixed by the Trustee for the payment of that overdue interest. The special record date shall be fixed by the Trustee whenever moneys become available for payment of the overdue interest and shall not be more than 15 nor fewer than 10 days prior to the date for the proposed payment. Notice of the special record date shall be given to registered owner of this bond not less than 10 days prior to the special record date. The principal of and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Trustee. Notwithstanding the foregoing, so long as this bond is held by the Depository, principal and interest shall be paid by wire transfer in immediately available funds in accordance with the Depository's rules and regulations.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and laws of the State of Arizona to exist, to occur and to be performed precedent to and in the issuance of this bond do exist, have occurred and have been performed.

This bond is one of a duly authorized issue of bonds of the District known as its Lease Revenue Bonds, Series 2016 (Greyhound Project) (the "*Series 2016 Bonds*"), in an aggregate principal amount of \$2,000,000 issued for the purpose of (i) financing, design and constructing of a Mass Commuting Facility, (ii) funding a debt service reserve account, [(iii) paying capitalized interest on the Series 2016 Bonds through July 1, 2013,] and (iv) paying costs of issuance of the Series 2016 Bonds. The series designation of this bond is stated above. All of the Series 2016 Bonds are special obligations of the District issued under and equally and ratably secured, both as to principal and interest, by a Trust Agreement, dated as of February 1, 2016, (hereinafter referred to as the "*Trust Agreement*"), between the District and the Trustee. Reference is hereby made to the Trust Agreement for the nature and extent of the security, a statement of the terms and conditions upon which the Series 2016 Bonds are issued and secured, the rights of the registered owners hereof and the terms under which obligations on a parity with the Series 2016 Bonds may be issued in the future (collectively, "*Additional Bonds*" and together with the Series 2016 Bonds, the "*Bonds*").

Pursuant to the terms of the Trust Agreement, the Series 2016 Bonds are payable from a pledge of, and secured by a lien on, the Lease Revenues from Greyhound Lines, Inc. ("Greyhound") (as defined in the Trust Agreement and hereinafter) as may be necessary for its prompt and punctual payment on parity with the pledge of the Lease Revenues to the payments due on any Additional Bonds as provided herein. Said pledge of, and said lien on, the Lease Revenues is hereby irrevocably made and created by the District for the prompt and punctual payment of principal and interest due on the Series 2016 Bonds according to their terms. None of the Bonds shall be entitled to priority or distinction one over the other in the application of the Lease Revenues hereby pledged to the payment thereof, regardless of the issue of the Bonds in series, or the delivery of any of the Bonds prior to the delivery of any other of the Bonds of said series, or regardless of the time or times the Bonds mature or are called for redemption prior to maturity or otherwise. All of the Bonds are co-equal as to the pledge of and lien on the Lease Revenues pledged for the payment thereof and share ratably, without preference, priority or distinction, as to the source or method of payment from Lease Revenues or security therefor.

So long as any of the Bonds remain outstanding, and the principal of and interest thereon are unpaid or unprovided for, the District covenants herein that it will not further pledge or encumber Lease Revenues on a basis senior or superior to the pledge of Lease Revenues providing security therefor. Under the Trust Agreement, the District may issue Additional Bonds secured by a lien on the Lease Revenues on parity with the Series 2016 Bonds.

Under the Trust Agreement and this bond, Lease Revenues means (a) Rent (as such term is defined below) (b) all other moneys received or to be received by the District or the Trustee in respect of the Lease and any amendment or supplement to the Lease, including without limitation, moneys and investments in the Bond Retirement Fund (as such term is defined below), and (c) all income and profit from the investment of the foregoing moneys.

Rent means the amount Greyhound will pay the District under the Property and Special Facility Lease Agreement dated as of June \_\_, 2016 (the "*Lease*"), between the District and Greyhound for use of the Special Facility together with (i) any and all amounts necessary to cause redemption of the Series 2016 Bonds, (ii) all fees and expenses of the Trustee and the registrar and paying agents under the Trust Agreement, to the extent, if any, that such fees, expenses and payments are not met by the regular annual rental payments for use of the Special Facility, (iii) reserve fund payments due under the Trust Agreement, and [(iv) any interest on overdue amounts and the amount paid by Greyhound to the District under the Lease for use of the Project Site together with the reasonable expenses of the District in administering the Series 2016 Bonds (collectively the "*Rent*")].

Bond Retirement Fund means the fund created by the District and held by the Trustee to pay the principal of and interest on the Series 2016 Bonds.

As provided in, and to the extent permitted by the Trust Agreement, or any supplement thereto, the rights and obligations of the District and the registered owners of the Series 2016 Bonds may be modified by the District with the written consent of the registered owners of a majority of the principal amount of all Series 2016 Bonds outstanding, including all Series 2016 Bonds on a parity with the Series 2016 Bonds; provided, however, that no such modification shall effect the reduction of, or the extension of the stated time of payment of the principal hereof or of the interest hereon, or permit the creation of any lien on the trust estate prior to or on a parity with the lien of the Trust Agreement (except parity obligations or other obligations under the conditions set forth in the Trust Agreement) or deprive the registered owner hereof of the lien created by the Trust Agreement.

Redemption Provisions

Optional Redemption. The Series 2016 Bonds maturing on or before July 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series 2016 Bonds maturing on or after July 1, 20\_\_ are subject to optional redemption prior to maturity at the option of the District, from any available funds, in whole or in part, in denominations of \$5,000 or integral multiples thereof from maturities selected by the District and by lot within a maturity, on July 1, 20\_\_, and on any date thereafter by the payment of a redemption price equal to the principal amount of each such Series 2016 Bond called for redemption plus interest accrued to the date fixed for redemption, but without premium.

Mandatory Redemption. The Series 2016 Bonds maturing on July 1, 20\_\_ are subject to mandatory redemption prior to their stated maturity, by the Depository through the procedures of its book-entry-only system, or if the book-entry only system is not in effect, then by lot by the Trustee, on July 1 of the following years, and in the following principal amounts, at a redemption price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year</u>	<u>Principal Amount</u>
20__	\$
20__ (Maturity)	

The Series 2016 Bonds maturing on July 1, 20\_\_ are subject to mandatory redemption prior to their stated maturity, by the Depository through the procedures of its book-entry-only system, or if the book-entry only system is not in effect, then by lot by the Trustee, on July 1 of the following years, and in the following principal amounts, at a redemption price equal to the principal amount thereof plus interest accrued to the date of redemption, but without premium:

<u>Year</u>	<u>Principal Amount</u>
20__	\$
20__	
20__ (Maturity)	

Whenever Series 2016 Bonds subject to mandatory redemption are redeemed (other than pursuant to mandatory redemption) or are delivered to the registrar for cancellation, the principal amount



of the Series 2016 Bonds of such maturity so retired shall satisfy and be credited against the mandatory redemption requirements for such maturity as designated by the District.

Extraordinary Mandatory Redemption. The Series 2016 Bonds shall be subject to special mandatory redemption prior to maturity on any date selected by the District not later than 180 days after the occurrence of a Determination of Taxability (as defined below) at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the redemption date, but without premium. Any such special mandatory redemption shall be in whole unless it is finally determined as evidenced by an opinion of Bond Counsel delivered and addressed to the District and the Trustee that less than all of the Series 2016 Bonds may be redeemed without adversely affecting the exclusion of interest on the remaining Series 2016 Bonds from gross income for federal income tax purposes, in which case only the principal amount of Series 2016 Bonds indicated in such opinion need be redeemed.

"Determination of Taxability" means a Final Determination (as defined below) by the Internal Revenue Service or by a court of competent jurisdiction in the United States that, or an opinion of nationally recognized bond counsel selected by the District to the effect that the interest payable on any Series 2016 Bond is or will become includable in the gross income of the owner of such Series 2016 Bond for federal income tax purposes (other than an owner who is a substantial user or related person within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended (the "*Code*"). "Final Determination" means, with respect to a private letter ruling or a technical advice memorandum or determination of the Internal Revenue Service, written notice thereof in a proceeding in which the District had an opportunity to participate and otherwise means written notice of a determination from which no further right of appeal exists or from which no appeal is timely filed with any court of competent jurisdiction in the United States in a proceeding to which the District was a party or in which the District had the opportunity to participate.

If the Trustee receives written notice from any Owner stating that (i) the Owner has been notified in writing by the Internal Revenue Service that it proposes to include the interest on any Series 2016 Bond in the gross income of such Owner for the reasons stated in the definition of "Determination of Taxability" as set forth above or any other proceeding has been instituted against such owner which may lead to a Final Determination as set forth above, and (ii) such Owner will afford the District the opportunity to contest the same, either directly or in the name of the Owner, until a conclusion of any appellate review, if sought, then the Trustee shall promptly give notice thereof to the District and to the Owner of Series 2016 Bonds then Outstanding. If a Final Determination thereafter occurs, the Trustee shall make demand for prepayment of the unpaid Bond Service Charges (as defined in the Trust Agreement) or necessary portions thereof from the District and give notice of the special mandatory redemption of the appropriate amount of Series 2016 Bonds on the date selected by the District within the required period of 180 days. In taking any action or making any determination as set forth in the Trust Agreement, the Trustee may conclusively rely on an opinion of counsel.

Extraordinary Optional Redemption. The Series 2016 Bonds shall be subject to redemption in whole prior to maturity at the option of and upon direction of the District on a date selected by the District if any part of the Special Facility is Destroyed or Condemned (as described in the Trust Agreement) at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the redemption date. In the event the proceeds received from the District's insurance required pursuant to the Lease or the condemnation are insufficient to redeem the outstanding Series 2016 Bonds in whole, then Greyhound agrees to pay as additional Rent an amount sufficient to redeem the outstanding Series 2016 Bonds in whole.

So long as the book-entry-only system is in effect, notice of any redemption will be given by the Trustee on behalf of the District to the Depository by the method required by the Depository. If

the book-entry-only system is discontinued, notice of any redemption of the Series 2016 Bonds shall be mailed by first class mail, postage prepaid, not more than 60 nor less than 30 days prior to the date fixed for redemption, to the registered owner of each Series 2016 Bond to be redeemed in whole or in part at the registered owner's address shown on the registration books for the Series 2016 Bonds on the 15th day preceding that mailing.

Should the book-entry-only system be discontinued, the Registrar, initially the Trustee, shall maintain the registration books of the District for the registration of ownership of each Series 2016 Bond as provided in the Trust Agreement.

Should the book-entry-only system be discontinued, this bond may be transferred on the registration books upon delivery hereof to the Registrar, accompanied by a written instrument of transfer in form and with guaranty of signature satisfactory to the Registrar, duly executed by the registered owner of this bond, or his or her attorney-in-fact or legal representative, containing written instructions as to the details of the transfer. No transfer of this bond shall be effective until entered on such registration books.

In all cases upon the transfer of a Series 2016 Bond, the Registrar shall enter the transfer of ownership in the registration books and shall authenticate and deliver, in the name of the transferee or transferees, a new fully registered Series 2016 Bond or Series 2016 Bonds of the denominations of \$5,000 or any whole multiple thereof (except that no Series 2016 Bond shall be issued which relates to more than a single principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of the Trust Agreement.

The registered owner of one or more Series 2016 Bonds may, upon request, and upon the surrender to the Registrar of such Series 2016 Bonds, exchange such Series 2016 Bonds for Series 2016 Bonds of other authorized denomination of the same maturity, series, and interest rate together aggregating the same principal amount as the Series 2016 Bonds so surrendered.

The District or the Registrar shall charge the registered owner of such Series 2016 Bond, for every such transfer or exchange of a Series 2016 Bond, an amount sufficient reimburse it for any tax, governmental fee or other governmental charge required to be paid with respect to such transfer, and may require that such charge be paid before any such new Series 2016 Bond shall be delivered. The District shall pay all initial registration fees on the Series 2016 Bonds. Subsequent owners of Series 2016 Bonds will pay all transfer fees including governmental fees, taxes or charges. The registered owner of any Series 2016 Bond shall be required to pay any expenses incurred in connection with the replacement of a mutilated, lost, stolen or destroyed Series 2016 Bond.

The District and the Registrar may, but are not required to, transfer or exchange any Series 2016 Bonds during the period (i) from the record date to and including the respective Interest Payment Date or (ii) from fifteen days prior to the selection of Series 2016 Bonds to be redeemed and including the day on which notice of redemption is given. The Registrar may, but is not required to, transfer or exchange any Series 2016 Bonds within the periods referred to above, the interest payment on such Series 2016 Bonds will be made payable to and mailed to the registered owners shown on the bond register maintained by the Registrar as of the close of business on the respective record date.

This bond shall not be entitled to any security or benefit under the Trust Agreement or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

This bond is a special obligation of the District, and no incorporator, member, director, officer or agent, as such, past, present or future, of the District shall be personally liable for the payment

hereof.

**IN WITNESS WHEREOF**, the Chair and Secretary of the District have caused this Bond to be executed in the name of the District by the facsimile signature of said Chair and by the facsimile signature of said Secretary, all as of the date written above.

**RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT**

(Facsimile) \_\_\_\_\_  
Chair

**ATTEST:**

(Facsimile) \_\_\_\_\_  
Secretary

-----

Date of Authentication: \_\_\_\_\_, 2016

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the Rio Nuevo Multipurpose Facilities District Lease Revenue Bonds, Series 2016 (Greyhound Project).

\_\_\_\_\_, as  
Registrar

By \_\_\_\_\_  
Authorized Representative

-----

**[FORM OF ASSIGNMENT]**

The following abbreviations, when used on this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT/TRANS MIN ACT - \_\_\_\_\_ (Custodian)  
Custodian for \_\_\_\_\_ (Minor) Under Uniform  
Gifts/Transfers to Minors Act of \_\_\_\_\_ (State)

Additional abbreviations may also be used though not in the above list.

### **ASSIGNMENT**

FOR VALUE RECEIVED, THE UNDERSIGNED SELLS, ASSIGNS AND TRANSFERS UNTO THE WITHIN BOND AND IRREVOCABLY CONSTITUTES AND APPOINTS ATTORNEY TO TRANSFER THAT BOND ON THE BOOKS KEPT FOR REGISTRATION THEREOF, WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature guarantee should be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.

\_\_\_\_\_  
NOTICE: The signature(s) on this assignment must correspond with the name(s) of the registered owner(s) appearing on the face of the within bond in every particular

## **EXHIBIT B**

### **Payment Request Form**

The Trustee is hereby requested to pay from the Acquisition and Construction Fund, as defined in the Trust Agreement, dated as of \_\_\_\_\_ 1, 2016 (the "Trust Agreement"), between Rio Nuevo Multipurpose Facilities District (the "District") and \_\_\_\_\_, as trustee (the "Trustee") to the person or corporation designated below as Payee, the sum set forth below such designation, in payment of the Delivery Cost or the Costs of Acquisition (both as defined in the Trust Agreement) described below.

<u>Name of Payee</u>	<u>Amount</u>
_____	_____
_____	_____
_____	_____

DATED: \_\_\_\_\_.

**RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT**

By \_\_\_\_\_  
District Representative

Please forward payment to Payee at the following address(es):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **EXHIBIT C**

### **Reimbursement Request Form**

The Trustee is hereby requested to pay from the Acquisition and Construction Fund established by the Trust Agreement, dated as of \_\_\_\_\_ 1, 2016 (the "Trust Agreement"), between the Rio Nuevo Multipurpose Facilities District (the "District") and \_\_\_\_\_, as trustee, to the District, the sum set forth below as reimbursement of (all/a portion) of the Delivery Cost or the Costs of Acquisition (both as defined in the Trust Agreement) described below.

Amount: \_\_\_\_\_

Description of project cost or portion thereof for which reimbursement is hereby requested:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Dated: \_\_\_\_\_.

**RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT**

By \_\_\_\_\_  
District Representative

*APPENDIX C*

*LEASE BY AND BETWEEN THE DISTRICT AND GREYHOUND LINES,  
INC.*

## SALE AGREEMENT AND ESCROW INSTRUCTIONS

Contract Date: September 12, 2014

Seller: 5 North 5th Hotel, LLC  
2140 West Moore Road  
Tucson, Arizona 85755  
Attention: Ms. Chris Hodgson  
Telephone: 520-229-3451  
Telecopy: 520-498-6458

Buyer: Rio Nuevo Multipurpose Facilities District  
52 West Congress Street  
Tucson, Arizona 85701  
Attention: Mark Irvin  
Telephone: 520-620-1833  
Telecopy: 520-620-1830

With a copy to: Mark Collins  
Gust Rosenfeld, PLC  
One S. Church Avenue, Suite 1900  
Tucson, AZ 85701  
Telephone: 520-388-4780  
Telecopy: 520-624-3849

Escrow Agent: First American Title Insurance Company  
1880 East River Road, Suite 200  
Tucson, Arizona 85718  
Attention: Ms. Janice Saunders  
Telephone: 520-615-4231  
Telecopy: 520-529-5036

Escrow: First American Title Escrow No. 5651629-15

### ARTICLE 1. AGREEMENT AND DEFINITIONS

#### 1.1 Background.

(a) Seller is the owner of, or is under contract to purchase, the real property generally described as Lots 5, 8, 9 and 12, in Block 92, City of Tucson, per Book 3 of Maps and Plats, page 70 ("Parcel"). Seller anticipates subjecting a portion of the Parcel to a horizontal property regime, as generally depicted on the attached Exhibit "A" ("Preliminary Plat"), and constructing thereon a multi-purpose facility consisting of a hotel, a parking garage, and retail facilities. The portion of the Parcel described in the Preliminary Plat that creates the parking garage, and containing thereon approximately two hundred parking spaces, is referred to in this Agreement as the "Property." This Agreement will be amended by the parties to add a



more precise legal description of the Property within a reasonable time after the Preliminary Plat has been approved by the City of Tucson ("City").

(b) Buyer is a special taxing district created to facilitate the development of a vibrant downtown district within the City, and pursuant to its charter is authorized to receive an incremental portion of state-shared funds derived from transaction privilege taxes collected within its boundaries, including the Parcel. The acquisition of the Property is consistent with and authorized under Buyer's governmental charter, and the development of the Parcel by Seller, including the construction of a hotel thereon, will provide benefits to Buyer in accordance with its organizational purpose and in order to obtain the incremental tax revenues associated therewith.

1.2 Agreement. Upon the Opening of Escrow, this Sale Agreement and Escrow Instructions will constitute a binding agreement ("Agreement") for the sale and purchase of the Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller's interest in the Property upon the terms and conditions of this Agreement. The term "Property" will also include any easements and rights appurtenant thereto, to the extent owned and assignable by Seller.

1.3 Escrow Instructions. This Agreement will constitute the sole escrow instructions of Buyer and Seller to the Escrow Agent, and the standard form escrow instructions of Escrow Agent will not be used for this Escrow.

## **ARTICLE 2. PRICE, ESCROW, AND PRORATIONS**

2.1 Purchase Price. The total purchase price for the Property is Four Million Three Hundred Thousand and No/100 Dollars (\$4,300,000.00) ("Purchase Price"). The Purchase Price will be paid by Buyer to Seller as follows:

(a) Within two business days after Escrow Agent's receipt of this Contract executed by Buyer and Seller, Buyer will deposit with Escrow Agent in Good Funds (defined below) an initial earnest money deposit in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) ("Initial Earnest Money").

(b) On or before the expiration of the last Contingency Period as described in Article 3, Buyer will deposit with Escrow Agent in Good Funds an additional earnest money deposit in the amount of Ninety Thousand and No/100 Dollars (\$90,000.00) ("Additional Earnest Money") so long as Buyer has not elected previously to terminate the Contract pursuant to the terms and conditions below. Upon Buyer's deposit of the Additional Earnest Money, all Earnest Money will be non-refundable except as provided in Sections 3.2(c) (New Title Matters), 4.3 (Representation Breach), 6.2 (Seller Default), or 6.6 (Condemnation).

(c) The remaining balance of the Purchase Price (after deduction of the Earnest Money, and subject to the terms of Section 2.4) shall be paid by Buyer to Seller through Escrow on the Closing Date, in Good Funds ("Closing Cash").

(d) The Earnest Money will be held by Escrow Agent in an interest-bearing account with any federally insured financial institution with offices in the State of Arizona ("Bank"). As used in this Contract, the term "Earnest Money" means the Initial Earnest

Money, the Additional Earnest Money, and all interest that may accrue from time to time on either or both. All deposits and other payments required of Buyer under this Contract must be made in cash, by confirmed wire transfer, by certified check drawn on any Bank, or by cashier's check issued by any Bank representing good, sufficient, and immediately-available U.S. funds ("Good Funds").

(e) The Earnest Money will be paid or applied by Escrow Agent as follows: (i) if Buyer properly cancels this Agreement pursuant to Article 3, or Sections 4.3, 6.2, or 6.6, below, the Earnest Money will be returned promptly to Buyer; (ii) if Seller terminates this Agreement pursuant to Section 2.5, below, the Earnest Money will be returned promptly to Buyer; (iii) if the Earnest Money is forfeited by Buyer pursuant to this Agreement, the Earnest Money will be released promptly by Escrow Agent to Seller; or (iv) if this Escrow closes on or before the scheduled Closing Date, the Earnest Money will be applied by Escrow Agent for the benefit of Buyer to the Purchase Price and Buyer's share of any closing costs and prorations.

2.2 Brokers. Buyer and Seller represent to each other that neither has dealt with any broker or any other person concerning this purchase and sale of the Property in a manner that would give rise to a claim for the payment of a fee or commission. Each party agrees, on demand, to indemnify, defend, and hold harmless the other party for, from, and against any claim, damage, loss, liability, or expense, (including attorney fees in a reasonable amount) arising out of any act or omission of the party or its representatives that forms the basis for any claim for commissions, fees, or any similar charge. As used in this Agreement, the term "broker" means any real estate broker, salesperson, agent, finder, or any other person entitled to a real estate commission, fee, or any similar charge. The parties acknowledge that Mark Irvin and Alberto Moore are licensed Real Estate Brokers in the State of Arizona and are also members of the Board of Directors of Buyer. Neither Mr. Irvin nor Mr. Moore are receiving any compensation under the terms of this Agreement and have no fiduciary duty to Seller.

2.3 Opening of Escrow. The date of the Opening of Escrow ("Opening of Escrow") will be the date on which Escrow Agent has received this Agreement executed by Buyer and Seller, on which date Escrow Agent shall accept this Agreement as its escrow instructions by executing this Agreement on the signature page. Escrow Agent is instructed to insert the date of opening in the signature portion of this Agreement. If the Opening of Escrow has not occurred within five business days after execution and submission to Escrow Agent by Seller of this Agreement, any offer intended or implied by this Agreement will be deemed revoked and terminated.

2.4 Closing Dates. The completion of the purchase and sale transaction described in this Agreement ("Close of Escrow") will occur within 15 business days following written notice from Seller to Buyer that Seller has received a certificate of occupancy or similar document from the City evidencing that the Property has been substantially completed ("Closing Date"), unless extended or shortened by mutual consent of Buyer and Seller.

2.5 Seller Contingency. Buyer acknowledges that, as of the Contract Date, the Property has not been subjected to a horizontal property regime, and that the contemplated improvements thereon have not been constructed. Seller's obligations under this Agreement are expressly contingent upon (i) Seller acquiring the balance of the Parcel it does not currently own, (ii) Seller obtaining the City's approval of the Preliminary Plat, and recording against the applicable portion of the Parcel a condominium plat and declaration of condominium ("Condo

Documents”), (iii) Seller obtaining the City’s approval of its plans and specifications for the development and construction of the property subject to the Condo Documents; and (iv) Seller obtaining financing for the acquisition, development and construction of the improvements subject to the Condo Documents on terms and conditions acceptable to Seller and Lender, including financing that permits the transactions described herein (“Financing”). Buyer expressly acknowledges that terms of the Financing are subject to the sole, absolute and exclusive discretion of each of Seller and Lender, and, without limiting the foregoing, that Seller may terminate this Agreement pursuant to this Section 2.5 if Seller does not approve any terms of the Financing, or if different terms for Financing are offered if the transactions described herein are not consummated, or if the Lender imposes additional conditions or requirements on Seller on account of this Agreement or the transactions contemplated hereby. Notwithstanding the foregoing, if Seller unilaterally terminates this Agreement under this provision, Seller shall pay Buyer \$10,000 as liquidated damages for its out of pocket costs in pursuing this Agreement. The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Buyer as a result of Seller’s termination of this Agreement; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Buyer for such termination. Buyer further acknowledges that Seller’s ability to obtain the Financing will be expressly conditioned on Buyer’s performance under this Agreement, and that, following the expiration of Buyer’s contingencies hereunder, Buyer shall have no right to terminate this Agreement, except as expressly provided herein, and that Buyer’s obligations hereunder shall be specifically enforceable. If Seller provides written notice to Buyer and Escrow Agent of the failure of any of Seller’s contingencies under this Section, this Agreement shall terminate, Escrow Agent shall deliver to Buyer the Earnest Money, and neither party will have any further rights or obligations hereunder (except those that expressly survive the termination of this Agreement). Notwithstanding the foregoing, if Seller has not terminated this Agreement pursuant to this Section 2.5, and (a) all of the Seller’s contingencies set forth above have not been satisfied within two years from the date of this Agreement, or (b) Seller has not received a Certificate of Occupancy for the Property from the City within three years from the date of this agreement, then Buyer may terminate this Agreement by providing written notice to Escrow Agent and Seller. Upon receipt of such notice, Escrow Agent shall deliver to Buyer the Earnest Money, and neither party will have any further rights or obligations hereunder (except those that expressly survive the termination of this Agreement).

2.6 Prorations at Close of Escrow. Escrow Agent will prorate the following items between Seller and Buyer at Close of Escrow:

(a) Real property taxes, personal property taxes, and any special or improvement district assessments will be prorated between Seller and Buyer as of the Close of Escrow, based upon the actual amount of taxes or assessments that are due and payable on the Property for the year in which the closing occurs or, if this amount is not available, an estimate of the taxes and assessments based upon the best available information to Escrow Agent. Seller will be responsible for the payment of all real property taxes, personal property taxes, and any special or improvement district assessments that are attributable to the Property for the period of time prior to the Close of Escrow, and Buyer will be responsible for the payment of all real property taxes, personal property taxes, and any special or improvement district assessments that are attributable to the Property for the period of time on and after the Close of Escrow.

(b) All prorations must be made by Escrow Agent through the Closing Date and must be made on the basis of a proration year consisting of twelve (12) thirty day months. All proration items and closing costs that are not specifically dealt with under the terms of this Agreement will be allocated by Escrow Agent according to its standard custom and practice.

### **ARTICLE 3. DUE DILIGENCE AND BUYER CONTINGENCIES**

3.1 **Due Diligence Documents.** Within five (5) days after receipt of current copies of the following documents, each certified to the parties as noted below, Seller shall deliver to Buyer copies of (i) a current title commitment (the "Title Report") and copies of all instruments shown by the Title Report as exceptions; (ii) an ALTA/ACSM Survey of the Property, showing each Schedule B item contained in the Title Report and its effect on the Property (the "Survey") (certified to Buyer, Seller and the Title Company); (iii) a Phase I Environmental Assessment (the "Phase I") and any follow up studies suggested by the Phase I (certified to Buyer and to Seller); (iv) soils reports (certified to Buyer and to Seller); (v) site plans, concept plans, plats and related development materials, to the extent they are submitted to the City; (vi) archeological studies (certified to Buyer, to Seller and to the City); (vii) the Condo Documents; and (viii) Buyer's 100% Construction Plans with preliminary approval from the City (collectively, and without representation or warranty, the "**Due Diligence Documents**"). If the Due Diligence Documents are deemed by Buyer in its reasonable discretion not to be current enough to adequately evaluate the condition of the Property, then Buyer and Seller shall cooperate with each other to obtain updated Due Diligence Documents. Within five (5) business days after the Opening of Escrow, Escrow Agent will deliver to Buyer a commitment for a standard owner's policy of title insurance ("Title Report") and copies of all non-standard exceptions to the Title Report. If Buyer terminates this Agreement, Buyer shall immediately return the Due Diligence Documents to Seller. Buyer understands and acknowledges that Seller is providing the Due Diligence Documents to Buyer merely as an accommodation, and Seller is not in any way representing or warranting the accuracy, sufficiency or completeness of any documentation or information provided to Buyer. Approximately 30 days prior to the Closing, at Seller's sole cost and expense, Seller shall provide Buyer with an updated Title Report, Phase I (but only if the Closing Date is more than 180 days from the date of the Phase I) and any follow up studies, and any other Due Diligence Documents deemed necessary by Buyer to obtain an extended coverage title insurance policy.

3.2 **Buyer's Title Contingency.** Buyer's obligation to complete the purchase of the Property as contemplated under this Agreement is conditioned on Buyer's satisfaction or waiver of the title contingency described below. Buyer will have until 5:00 p.m. (Arizona time), on that date that is 30 days after receipt of the Title Report, copies of all non-standard exceptions to the Title Report and the Survey ("**Title Review Period**"), within which to notify Seller and Escrow Agent, in writing, of Buyer's disapproval ("**Title Objections**") of any title exceptions or other matters that are contained in the Title Report and the Survey, and Buyer's failure to make its Title Objections on a timely basis will be deemed a waiver of its title contingency under Sections 3.2(a) and (b) below.

(a) If Buyer makes any Title Objections on or before the end of the Title Review Period, Seller may elect, by delivering written notice to Buyer and Escrow Agent, to: (i) cancel and terminate this Agreement; or (ii) attempt to cure all or any of the Title Objections, in which case any Title Objections cured by Seller will be considered to have been

approved by Buyer. Seller may cure the Title Objections by causing the removal of record of the Title Objections, modifying of record the Title Objections, obtaining a commitment from Escrow Agent to eliminate the Title Objections from the final owner's policy of title, or causing Escrow Agent to issue an endorsement insuring Buyer against loss or damage from the Title Objections or to provide other affirmative assurances reasonably acceptable to Buyer with regard to the Title Objections. All endorsements must be in a form and content acceptable to Buyer, in its discretion reasonably exercised. All endorsements will be paid for by Buyer, unless Seller otherwise agrees in writing. Seller's election under subparagraph (i) or (ii) above must be made within ten (10) days after Seller's receipt of the Title Objections. Seller's failure to make a timely election under subparagraph (i) or (ii) above will be deemed an election to cancel under subparagraph (i) above. Except for consensual liens of Seller applicable to the Property, which Seller agrees to release at the Close of Escrow, Seller will have no obligation or duty to cure the Title Objections or to incur any expense in curing the Title Objections.

(b) If Seller has elected to cure any of the Title Objections pursuant to Section 3.2(a)(ii) above and does not or cannot cure those objections within thirty (30) days following the delivery of Seller's written election to cure, or if Seller has elected to cancel or terminate the Agreement pursuant to Section 3.2(a)(i) above, Buyer, as its sole and exclusive remedy, may elect to: (i) waive its Title Objections and complete the purchase of the Property at the Purchase Price (without any price adjustment and without any right or claim to damages, credit, or offset for the Title Objections); or (ii) cancel and terminate this Agreement in accordance with subparagraph (d) below. Buyer's failure to make the election described in the previous sentence within ten (10) business days after the earlier to occur of the expiration of Seller's cure period described above or Buyer's receipt (or deemed receipt) of Seller's cancellation notice will be deemed an acceptance of title as described in the Title Report and a waiver of Buyer's right to cancel this Agreement for a failure of Buyer's title contingency.

(c) If Escrow Agent amends the Title Report to reflect any additional exceptions resulting from new matters or facts caused by Seller, other than the Condo Documents, Buyer will have until the later of the Title Review Date or five (5) business days following its receipt of the amended Title Report (including copies of all new exceptions) to notify Seller in writing of Buyer's Title Objections to any new exception, and the terms of this Section 3.2 shall govern regarding Seller's and Buyer's rights and obligations with respect thereto.

(d) Upon a timely cancellation by Buyer pursuant to the title contingency described above, neither party will have any further obligation or liability under this Agreement, Buyer will deliver all Due Diligence Documents, to Escrow Agent (for delivery to Seller) and Buyer and Seller will be entitled to no additional rights or remedies against the other party and Escrow Agent will return the Earnest Money to Buyer.

3.3 Additional Buyer Contingencies. In addition to Buyer's title contingency, Buyer's obligation to complete the purchase of the Property as contemplated under this Agreement is conditioned on the satisfaction or waiver of the following feasibility and inspection contingencies:

(a) Buyer will have until 5:00 p.m. (Arizona time), on that date that is 30 days after receipt of each of the Due Diligence Documents listed in Section 3.1 (iii) through (vii) (each a "Contingency Period"), to reasonably object to any of such Due Diligence

Documents by providing Seller with written notice containing specific reasons for Buyer's objection(s). Seller will have ten days to elect to cure Buyer's objections or to decline to cure Buyer's objections. If Seller elects to cure Buyer's objections, Seller will have a 30 day period to cause the objections to be cured, or such other reasonable time period as agreed to by the parties. If Seller elects not to cure Buyer's objections, then Buyer will have ten days to either (i) terminate this Agreement, or (ii) elect to waive its objection that the particular Due Diligence Document at issue. If Buyer does not object to a particular Due Diligence Document within the initial Contingency Period, Buyer will be deemed to have waived its objection to that particular Due Diligence Document. Buyer shall approve the Condo Documents in Buyer's reasonable discretion, provided that the Condo Documents do reflect (i) at least 195 parking spaces within the Property; (ii) Buyer's right to own and operate the Property as a parking garage; (iii) adequate ingress and egress between the Property and dedicated rights-of-way; (iv) stairway and elevator access between each unit comprising the Property and the ground floor of the property subject to the Condo Documents; and (v) subject to Seller's lender's approval, there is no requirement for mandatory arbitration in the event of a dispute.

(b) Upon a timely cancellation by Buyer pursuant to the additional contingencies described in Section 3.3(a) above, neither party will have any further obligation or liability under this Agreement, Buyer will deliver all Due Diligence Documents, to Escrow Agent (for delivery to Seller) and Buyer and Seller will be entitled to no additional rights or remedies against the other party and Escrow Agent will return the Earnest Money to Buyer. If Seller elects to cure Buyer's objection to any of the Due Diligence Documents and fails to do so within the time frames set forth above, Buyer may terminate this Agreement upon written notice to Seller and Escrow Agent, provided that Seller shall pay Buyer \$10,000 for Buyer's out of pocket costs as liquidated damages for such default. The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Buyer as a result of Seller's default; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Buyer for Seller's default. Except for the payment of the liquidated damages to Buyer, neither party will have any further obligation or liability under this Agreement, Buyer will deliver all Due Diligence Documents to Escrow Agent (for delivery to Seller), and Buyer and Seller will be entitled to no additional rights or remedies against the other party and Escrow Agent will return the Earnest Money to Buyer.

(c) During the term of the Escrow, Buyer and its designated agents and independent contractors may access the Property during normal business hours to investigate the physical and environmental condition of the Property and to conduct all tests that Buyer may deem necessary. All investigations and tests must be conducted in a manner that does not unreasonably interfere with Seller's maintenance, ownership, or operation of the Property or the use and enjoyment of the Property by Seller or its permittees. Written notification of the date and time of Buyer's investigations and tests must be sent to Seller at least twenty-four (24) hours before entry on the Property. In addition to investigation and testing, Buyer may request information about the construction of the Property, which may include written documentation and physical observation. Seller agrees to promptly provide such information to Buyer upon Buyer's written request. If Buyer gives notice to Seller of any deviation from the Construction Plans or of any construction deficiencies that materially impact the quality, safety or integrity of the Property at any time prior to receipt of the Certificate of Occupancy, Seller shall be required to correct such deviation or deficiency prior to the Close of Escrow.

(d) If the results of Buyer's investigations, observations or tests of the Property, including the Due Diligence Documents, are not acceptable for any reason, Buyer may cancel this Agreement by delivering a written cancellation notice to Seller and Escrow Agent on or before the expiration of the Contingency Period for each Due Diligence Document. Buyer's failure to timely cancel this Agreement on or before the expiration of the last Contingency Period will be deemed an approval of the inspections and tests, its review of the Due Diligence Documents, and a waiver of Buyer's right to cancel the Agreement pursuant to this Article 3. Upon a timely cancellation by Buyer pursuant to the preceding sentences, neither party will have any further liability or obligation under this Agreement, Buyer will deliver all Due Diligence Documents to Escrow Agent (for delivery of Seller) and Buyer and Seller will be entitled to no additional rights or remedies against the other party and Escrow Agent will return the Earnest Money to Buyer.

#### **ARTICLE 4. DEED AND REPRESENTATIONS**

4.1 Deed. Seller will convey fee simple title to the Property to Buyer at Close of Escrow by a special warranty deed, subject to: (i) all matters that would be revealed by an accurate ALTA survey meeting the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys jointly established by the American Land Title Association and American Congress on Surveying & Mapping in 2011, including all optional items in Table A, Optional Survey Responsibilities and Specifications; (ii) the Condo Documents; (iii) all easements, deed reservations, and restrictive covenants of record and all other title matters approved by Buyer under this Agreement; (iv) all current and non-delinquent real estate taxes and special assessments; (v) all federal, state, and local zoning, building, land use, and environmental laws, ordinances, rules, and regulations; (vi) all patent reservations and other matters of record; (vii) all water rights and claims to water of record, if any; and (viii) all liens and assessments, if any, affecting the Property except those consensual liens that Seller has agreed to release pursuant to Section 3.2(a) above.

4.2 Representations. Seller and/or Buyer, as indicated below, represent to the other as follows as of the date hereof and at Closing:

(a) Seller represents that Seller, to its actual present knowledge as of the Opening of Escrow (without any duty of investigation), is not aware of any pending or threatened condemnation or similar proceedings affecting the Property or any portion.

(b) Seller represents that Seller is not prohibited from consummating the transaction contemplated by any law, regulation, agreement, order, or judgment applicable to Seller.

(c) Seller, by and through those parties executing this Agreement for and on behalf of Seller, represents that it is legally capable and properly authorized to perform all of its obligations as described in this Agreement.

(d) Seller represents that there are no contracts or other obligations outstanding for the sale, exchange, or transfer of all or any portion of the Property.

(e) No litigation is pending, or to Seller's actual knowledge, threatened or likely with respect to the Property, Seller's interest therein, or which could prevent Buyer from obtaining clear title to the Property.

(f) Seller represents that Seller has not received any notifications from any city, county, state, or other governmental authority having jurisdiction over the Property requiring any work to be done on the Property or alleging any violation of an applicable ordinance, rule, regulation, or law with respect to the Property.

(g) To Seller's actual knowledge, and except as disclosed in the Due Diligence Documents, (i) the Property is not contaminated with, nor threatened with contamination from outside sources by, any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority or which is known to pose a hazard to health and safety, in each case to the extent requiring remediation, and (ii) the Property has never been used for a landfill, dump site, underground improvements, storage of hazardous or regulated substances, or by a manufacturer of any product or for any other industrial use, nor is the Property subject to any other environmental limitation.

(h) During the period of time that Seller has owned the Property, neither Seller nor its agents have stored or transported any hazardous substances on the Property. During the period of time that Seller has owned the Property, Seller has not received notice from any governmental agency requiring any environmental clean-up or remediation on the Property.

(f) Buyer, by and through those parties executing this Agreement for and on behalf of Buyer, represents that it is legally capable and properly authorized to perform all of its obligations as described in this Agreement.

(g) Buyer represents that Buyer is not prohibited from consummating the transaction contemplated by any law, regulation, agreement, rule, or judgment applicable to Buyer.

4.3 Representation Breach. The consummation of the transaction outlined in this Agreement is expressly contingent upon Buyer not having discovered, prior to the Close of Escrow, any breach of Seller's representations made pursuant to Section 4.2 above.

(a) If, prior to the Close of Escrow, Buyer discovers a breach of any of Seller's representations made under Section 4.2 above, Buyer promptly must deliver written notice to Seller of the alleged breach, and Seller will have the right to either correct or cure the untrue representation or cancel and terminate this Agreement. An election by Seller to cure or correct the untrue representation may be made only by delivery of written notice to Escrow Agent and Buyer. Failure of Seller to make an election to cure will be deemed an election to cancel and terminate this Agreement. If Seller elects or is deemed to have elected to terminate this Agreement, Buyer will have the right, as its sole remedy, to: (i) terminate this Agreement (and receive a refund of all Earnest Money and be reimbursed by Seller for its out-of-pocket costs incurred in connection with this transaction, in an amount not to exceed the Initial Earnest Money); or (ii) accept the breach and consummate the purchase of the Property without adjustment in the Purchase Price and without any right or claim to damages. All elections must be made within five (5) days of the receipt of the applicable notice or election.



(b) If, after the Close of Escrow, Buyer first discovers a breach of Seller's representations that survive the Close of Escrow, Buyer will be entitled to bring an action against Seller for the actual and direct damages incurred by Buyer as a result of the breach. Any award of damages will not include punitive damages or consequential damages, whether or not foreseeable.

4.4 Construction Warranty. Seller represents and warrants that it shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for the construction of the Property, and shall comply with any and all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances pertaining to the construction of the Property.

4.5 Survival of Representations and Warranties. Seller's representations and warranties made under this Agreement will be deemed effective at all times from the Opening of Escrow to and including the Closing Date, except to the extent Buyer has discovered any breach. Subject to the limitations in Section 4.3 for a breach discovered prior to the Closing Date, Seller's representations contained in this Agreement will survive the Close of Escrow, conveyance of the Property to Buyer, and the delivery and recordation of Seller's special warranty deed. Notwithstanding anything to the contrary in this Agreement, any cause of action for a breach of Seller's representations contained in this Agreement must be commenced, if at all, by Buyer within one year after the Closing Date, and, if not timely commenced, any cause of action for breach will be deemed waived, unenforceable, and void.

## **ARTICLE 5. CLOSING DOCUMENTS**

5.1 Seller's Closing Documents and Items. By no later than the Closing Date, Seller will deliver to Escrow Agent the following documents and items:

(a) the special warranty deed required under Section 4.1 above in the form attached as Exhibit "B"; (ii) an Affidavit of Property Value;

(b) a Non-Foreign Affidavit stating, under the penalty of perjury, that Seller is not a "foreign person" as defined in Section 7701 and Section 1445 of the Internal Revenue Code;

(c) a lease and option agreement ("Lease"), in the form attached as Exhibit "C," and evidenced by a memorandum thereof in recordable form ("Memorandum");

(d) an assignment of warranties, assigning to Buyer, on a non-exclusive basis, and without representation or warranty, all of Seller's right and interest in all representations or warranties (express or implied), including all rights, claims, and causes of action which Seller may have against any contractor, materialman, supplier, distributor, or vendor relating to any work, materials, or equipment furnished to the Property prior to the Closing Date ("Assignment"); and

(e) any other documents that may be necessary or appropriate to perform and satisfy the obligations of Seller under this Agreement

5.2 Buyer's Closing Documents and Items. By no later than the Closing Date, Buyer will deliver to Escrow Agent the following documents and items: (i) the Closing Cash; (ii) an Affidavit of Property Value; (iii) the Lease and Memorandum; and (iv) any other documents that may be necessary or appropriate to perform and satisfy the obligations of Buyer under this Agreement.

5.3 Title Commitment. Concurrent with the Close of Escrow, Escrow Agent will irrevocably commit to issue to Buyer a commitment to issue Escrow Agent's standard coverage owner's policy of title insurance in the amount of the Purchase Price, subject only to Escrow Agent's standard exceptions and exclusions and those matters approved or deemed approved by Buyer in accordance with Section 3.2. The cost of the standard coverage owner's policy of title insurance will be paid by Seller. If Buyer requires any different or additional title insurance coverage, Buyer will pay for the different or additional title insurance coverage (and will satisfy Escrow Agent's requirements for the same).

5.4 Closing. When Escrow Agent holds each of the closing documents listed under Sections 5.1 and 5.2 and is committed to issue the title policy described in Section 5.3 above, Escrow Agent is authorized to complete the Close of Escrow by: (i) recording and delivering to Buyer the special warranty deed for the Property and the Affidavit of Property Value; (ii) recording immediately after the Deed and delivering to Seller the Memorandum; (iii) delivering to each of Buyer and Seller the Lease; (iv) issuing or irrevocably committing to issue the title policy described in Section 5.3 to Buyer; (v) delivering to Buyer and Seller a final closing settlement statement in a form and content approved by Buyer and Seller; (vi) paying from or applying Buyer's Earnest Money and any other Buyer deposits Buyer's share of closing costs and expenses (as allocated and prorated in this Agreement); (vii) delivering to Seller, in immediately available funds, the Purchase Price, less only Seller's closing costs and expenses (as allocated and prorated in this Agreement); and (viii) delivering to Seller and Buyer fully executed (where applicable) copies of any additional closing documents.

5.5 Possession. On the Closing Date, Seller will deliver possession of the Property to Buyer, subject to the Lease and Memorandum, and those matters described in Sections 3.2, 4.1, and 6.6.

## **ARTICLE 6. GENERAL PROVISIONS**

6.1 Default of Buyer. If Buyer breaches this Agreement or fails to perform any of its covenants or obligations under this Agreement, Seller, as its sole remedy, will be entitled to either (i) deliver a notice of immediate cancellation to Buyer and Escrow Agent and retain all Earnest Money as full, liquidated, and agreed-upon damages, or (ii) enforce specific performance of this Agreement. If Seller fails to file suit for its remedy of specific performance within sixty (60) days following the scheduled Closing Date, Seller will be deemed to have waived its specific performance remedy.

6.2 Default by Seller. If Seller is unable or unwilling to convey title and possession to the Property on the Closing Date in the manner required under this Agreement or if Seller otherwise breaches this Agreement, Buyer, as Buyer's sole and exclusive remedy, may elect to: (i) cancel this Agreement and the Escrow and receive a refund of its Earnest Money, and obtain reimbursement from Seller for its out-of-pocket costs incurred in connection with this transaction, in an amount not to exceed the Initial Earnest Money; (ii) waive the breach or

default and elect to close the transaction, without any adjustment to the Purchase Price and without any right or claim to damages, by accepting title to the Property in whatever condition Seller can convey; or (iii) enforce specific performance of this Agreement (but only to the extent that Seller conveys or attempts to convey the Property to a party other than Buyer at any time prior to Closing). Buyer's cancellation notice under subparagraph (i) above will be deemed effective immediately upon delivery of written notice of the cancellation to Seller and Escrow Agent. If Buyer is entitled to seek specific performance and fails to file suit for its remedy of specific performance within sixty (60) days following the scheduled Closing Date, Buyer will be deemed to have waived its specific performance remedy. The remedies available to Buyer under this Section 6.2 are intended to apply only in the event of a breach or default or event that is not otherwise dealt with under the terms of this Agreement. Buyer's remedies for a failure of a Buyer contingency or condition precedent are described in the applicable provisions of Article 3 to this Agreement. Buyer's remedies for a breach of a Seller representation are described in Article 4 to this Agreement, and Buyer's remedies for a breach of the Seller representation made under Section 2.2 are limited to the indemnity contained in Section 2.2.

6.3 Attorneys' Fees. If any action is brought by either Buyer or Seller regarding its rights under this Agreement, the prevailing party shall be entitled to attorney fees in a reasonable amount, expenses, and court costs both at trial and on appeal.

6.4 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement must be in writing and will be deemed to have been delivered, received, and effective: (i) on the business day of service, if served by hand-delivery; or (ii) on the date that is one (1) business day after deposit of the notice properly addressed to the party at the address shown on the cover page to this Agreement, if sent by overnight Federal Express or equivalent overnight delivery; or (iii) two (2) business days after deposit of the notice properly addressed, if sent by U.S. certified mail, return-receipt requested. The addresses, telephone numbers, and telecopy numbers shown on the first page of this Agreement are the places and numbers for delivery of all notices. Any party may change the place or number for delivery of notice by notifying all other parties.

6.5 Nomination and Assignment. Buyer may not assign or otherwise transfer any of its rights under this Agreement without the prior written consent of Seller, whose consent may be given or withheld in Seller's sole and absolute discretion. If any assignment is approved by Seller, however, any assignee of Buyer, by accepting an assignment, will be deemed to have assumed all of the obligations of Buyer under this Agreement. Subject to the limitation contained above in this paragraph, this Agreement is binding on and will inure to the benefit of the successors or assigns of Buyer and Seller. No person other than Buyer, Seller, and Escrow Agent is a party to this Agreement, and no person will be deemed or is intended to be a third-party beneficiary to this Agreement.

6.6 Condemnation. If all or any part of the Property is condemned or sold in lieu of condemnation by any governmental authority prior to the Close of Escrow, Buyer, within seven (7) days after Seller's written notice of condemnation, will have the right to: (i) cancel and terminate this Agreement by delivery of written notice to Seller and Escrow Agent, in which case all Earnest Money will be returned and refunded to Buyer and enforce against Seller any remedies that may be available under Section 4.3(a) for a breach of Seller's representations under Section 4.2(a); or (ii) proceed with the purchase of the Property, in which case the Purchase Price will be adjusted downward by the amount of all awards and payments actually

paid to Seller by the condemning authority. With respect to subparagraph (ii) above, if Seller has not actually received an award or payment from the condemning authority, Seller will assign to Buyer all of its rights to any awards or any payments without recourse to Seller, and the Purchase Price will not be adjusted. Seller agrees to notify Buyer promptly of any condemnation action instituted on the Property after the Opening of Escrow.

6.7 Additional Documents. The forms of the Lease and Purchase Right Agreement and Memorandum of Lease are attached hereto as Exhibit C and Exhibit D, respectively.

6.8 Governing Law and Exclusive Jurisdiction. This Agreement is to be governed by and construed and enforced in accordance with the laws of the State of Arizona. Any action brought to interpret, enforce, or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona, Pima County, or in the United States District Court for the District of Arizona. All parties irrevocably consent to this jurisdiction and venue and agree not to transfer or remove any action commenced in accordance with this Agreement.

6.9 Construction. The terms and provisions of this Agreement represent the results of negotiations between Seller and Buyer, neither of which have acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Seller and Buyer each waive the application of any rule of law which states that ambiguous or conflicting terms or provisions are to be interpreted or construed against the party whose attorney prepared the Agreement or any earlier draft of the Agreement.

6.10 Buyer Cooperation. Buyer acknowledges the significant contingencies involved in Seller's acquisition, development and sale of the Parcel, including the Property, and including as described in Section 2.5 of this Agreement. Buyer agrees to reasonably cooperate with Seller in connection with the development of the Parcel and the Property, including with respect to the preparation of the Condo Documents, the procurement of the Financing, the execution of a land and improvements lease with the City pursuant to A.R.S. § 42-620, et seq., with respect to portion of the Parcel (excluding the Property) and other construction and development matters; provided, however, the obligation to cooperate does not preclude taking such actions as Buyer may deem reasonably necessary to protect its interests, but does not require the expenditure of funds beyond expenditures made in Buyer's ordinary course of business. Buyer's covenants under this Section shall survive the Closing Date.

6.11 Entire Agreement. This Agreement constitutes the entire understanding between the parties pertaining to the subject matter of this Agreement, and all prior agreements, representations, and understandings of the parties, whether oral or written, are superseded and merged in this Agreement. No supplement, modification, or amendment of this Agreement will be binding unless in writing and executed by the parties. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Time is of the essence in the performance of each and every term of this Agreement.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original, but all of which together will constitute one binding agreement and instrument.

6.13 Severability. If any of the provisions of this Agreement or the applicability of any provision to a specific situation is held invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable in a manner consistent with the intent of this Agreement, and the validity and enforceability of all other provisions of this Agreement and all other applications of the enforceable provisions will not be affected by the invalidity or unenforceability of any provision, so long as the Agreement may still be enforced in a manner consistent with the intent of Buyer and Seller.

#### **ARTICLE 7. INDEMNIFICATION AND SPECIAL CONDITIONS**

7.1 Indemnity for Entry. Buyer, on demand, must indemnify, defend, and hold harmless Seller for, from, and against any and all loss, cost, damage, claim, liability, or expense, including court costs and attorney fees in a reasonable amount, arising out of Buyer's or its agent's or its independent contractor's entry on the Property for the purposes of its inspections and tests. The foregoing indemnity will not be limited in scope or applicability by the provisions of A.R.S. § 33-104. The foregoing indemnity includes any repairs necessary to restore the Property to its condition prior to the entry and to remove and release any mechanic's and materialmen's liens.

7.2 Survival of Indemnities. Notwithstanding anything to the contrary in this Agreement, the indemnities described in this Agreement (including, without limitation, those in Sections 2.2 and 7.1) will survive the Close of Escrow and any cancellation of this Agreement by either party. The indemnities described in this Agreement are intended to be separate and distinct obligations of the respective parties, enforceable against each respective party without limitation by any liquidated damage provision or contract damage theory.

Buyer and Seller have entered into this Agreement as of the Contract Date.

**SIGNATURES ON FOLLOWING PAGE**

Seller:

5 North 5<sup>th</sup> Hotel, LLC, an Arizona  
limited liability company


By:

  
Its manager

Buyer:

Rio Nuevo Multipurpose Facilities District,  
a political subdivision of the State of  
Arizona


By:

  
Its Secretary

ATTEST:

  
Clerk

This Agreement has been submitted to the undersigned attorney for Rio Nuevo, who has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Board.

  
Attorney to Rio Nuevo

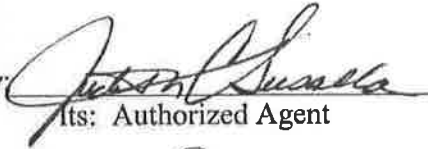
**ESCROW AGENT'S ACCEPTANCE**

By its execution below, Escrow Agent accepts this Agreement as its escrow instructions and acknowledges receipt of this Agreement executed by Buyer and Seller. Upon its execution, Escrow Agent agrees to: (i) insert the relevant escrow number on the first page of this Agreement; (ii) insert the date for the Opening of Escrow; and (iii) return copies of the Agreement to Buyer and Seller and retain the original for Escrow Agent's files.

"Escrow Agent"

First American Title Insurance Company

Sept 16, 2014  
Date of "Opening of Escrow"

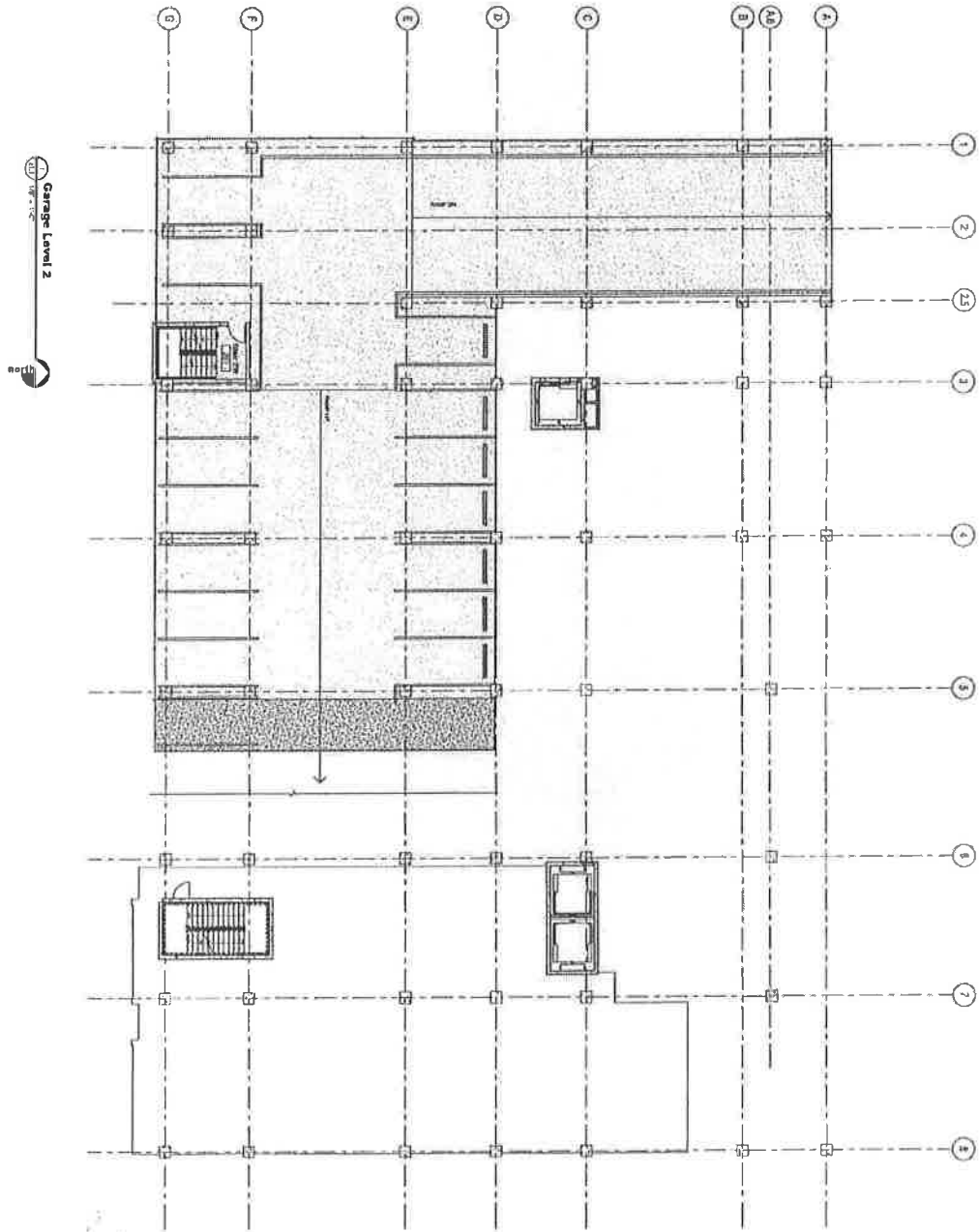
By:   
Its: Authorized Agent

  
J. J. Prince  
Escrow Agent

**EXHIBIT "A"**  
**TO**  
**SALE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(Preliminary Plat)





floor plan - 2nd floor

a1.1



**AC TUCSON**  
A Marriott Brand Hotel  
151 East Broadway Blvd.  
Tucson, Arizona 85701

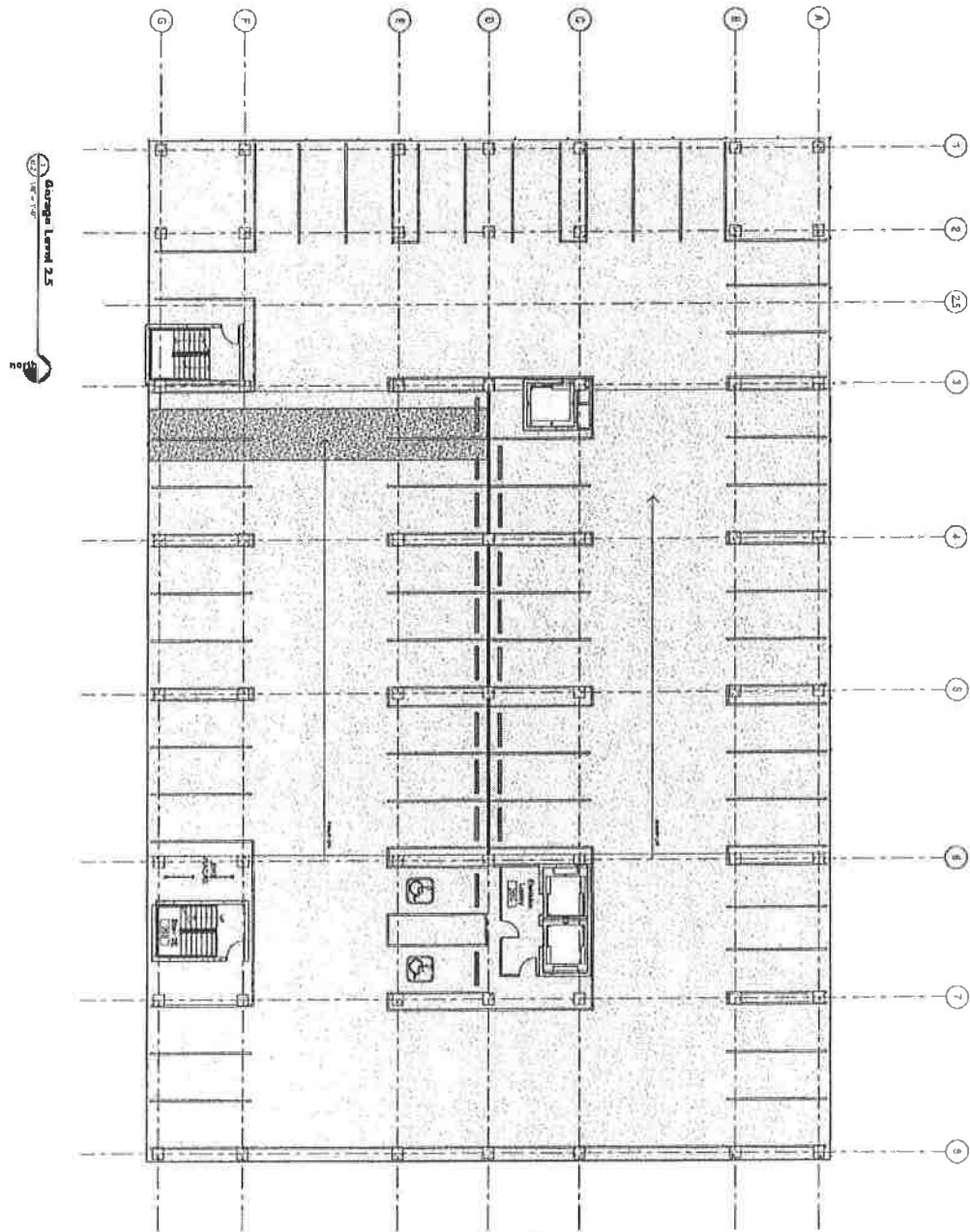
Swain Jan 8	1317
For Jan 8	1449
Date	09.13.14
Project	

Swain Jan 8	1317
For Jan 8	1449
Date	09.13.14
Project	



**FOR**  
S

**Swain**  
ASSOCIATES LTD.  
ARCHITECTS  
151 E. BROADWAY BLVD.  
TUCSON, AZ 85701



a1.2

floor plan - level 2.5



**AC TUCSON**  
A Marriott Brand Hotel  
151 East Broadway Blvd.  
Tucson, Arizona 85701



Sheet 10 of 8  
1317  
1449  
08/13/14

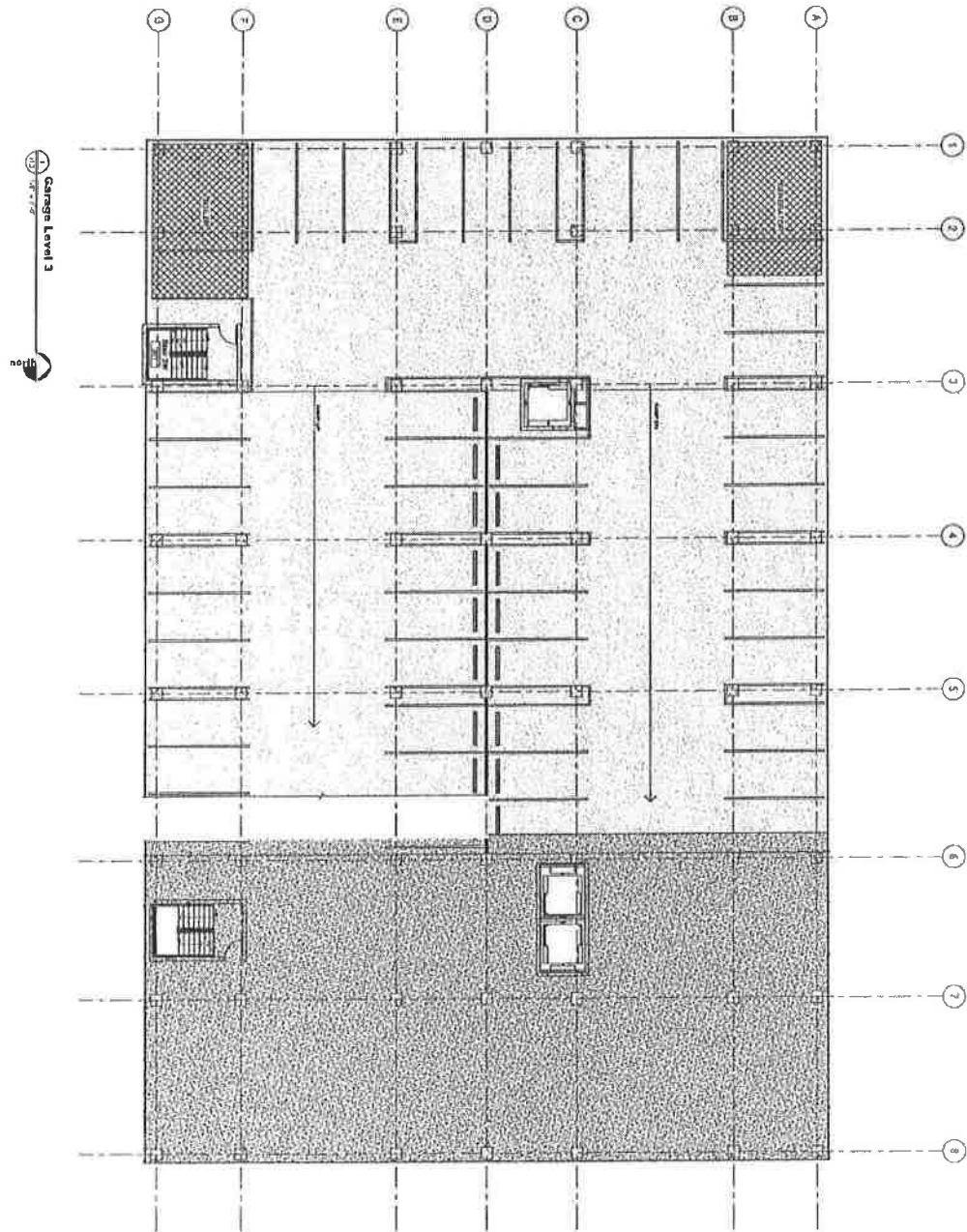


10/10/14

FOR

SWAIM

ASSOCIATES, LTD.  
ARCHITECTS, P.A.



**AC TUCSON**  
A Marriott Brand Hotel  
151 East Broadway Blvd.  
Tucson, Arizona 85701



Version	1317
POS Job #	1449
Date	08.19.14
Project	

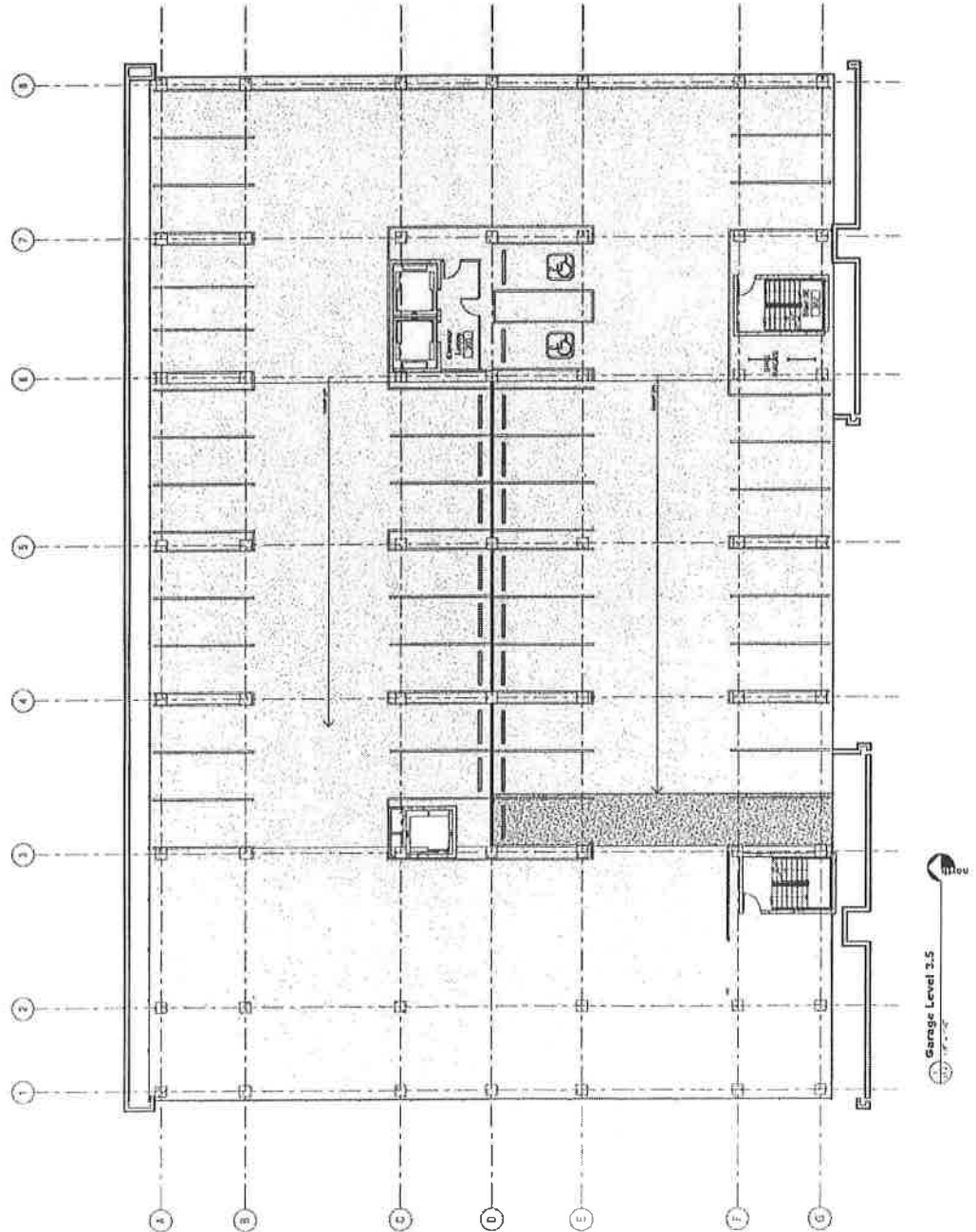
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1317  
POS Job #  
1449  
Date  
08.19.14



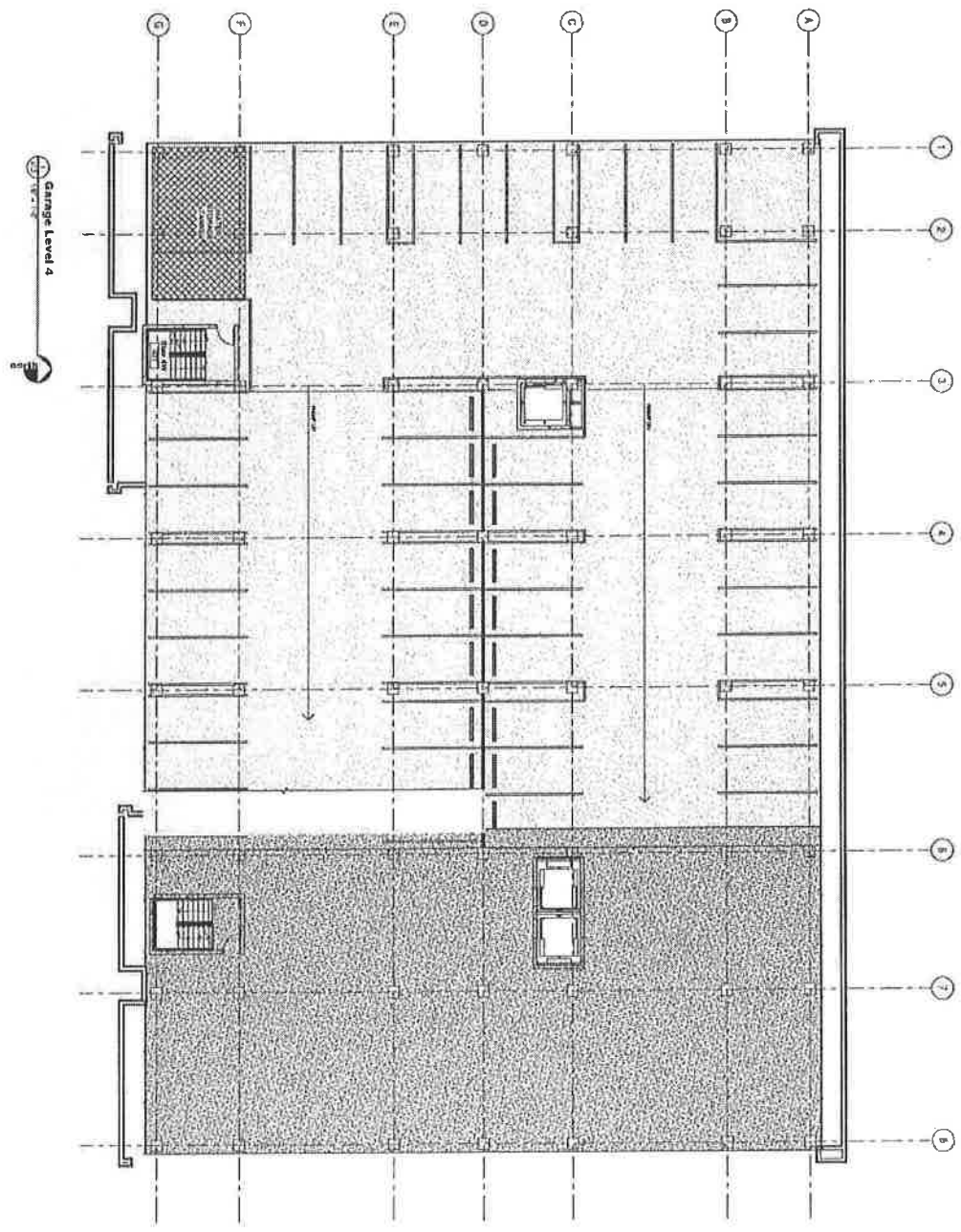
**FLOYD**  
ARCHITECTS

**FORS**  
ARCHITECTS

SWAIM  
ASSOCIATES, LLC  
ARCHITECTS, P.A.



Garage Level 3.5



a1.5

floor plan - 4th floor



**AC TUCSON**  
A Marriott Brand Hotel  
151 East Broadway Blvd.  
Tucson, Arizona 85701

Sheet No. 4	1317
Room No. 4	1449
Date	09/19/14
Project No.	

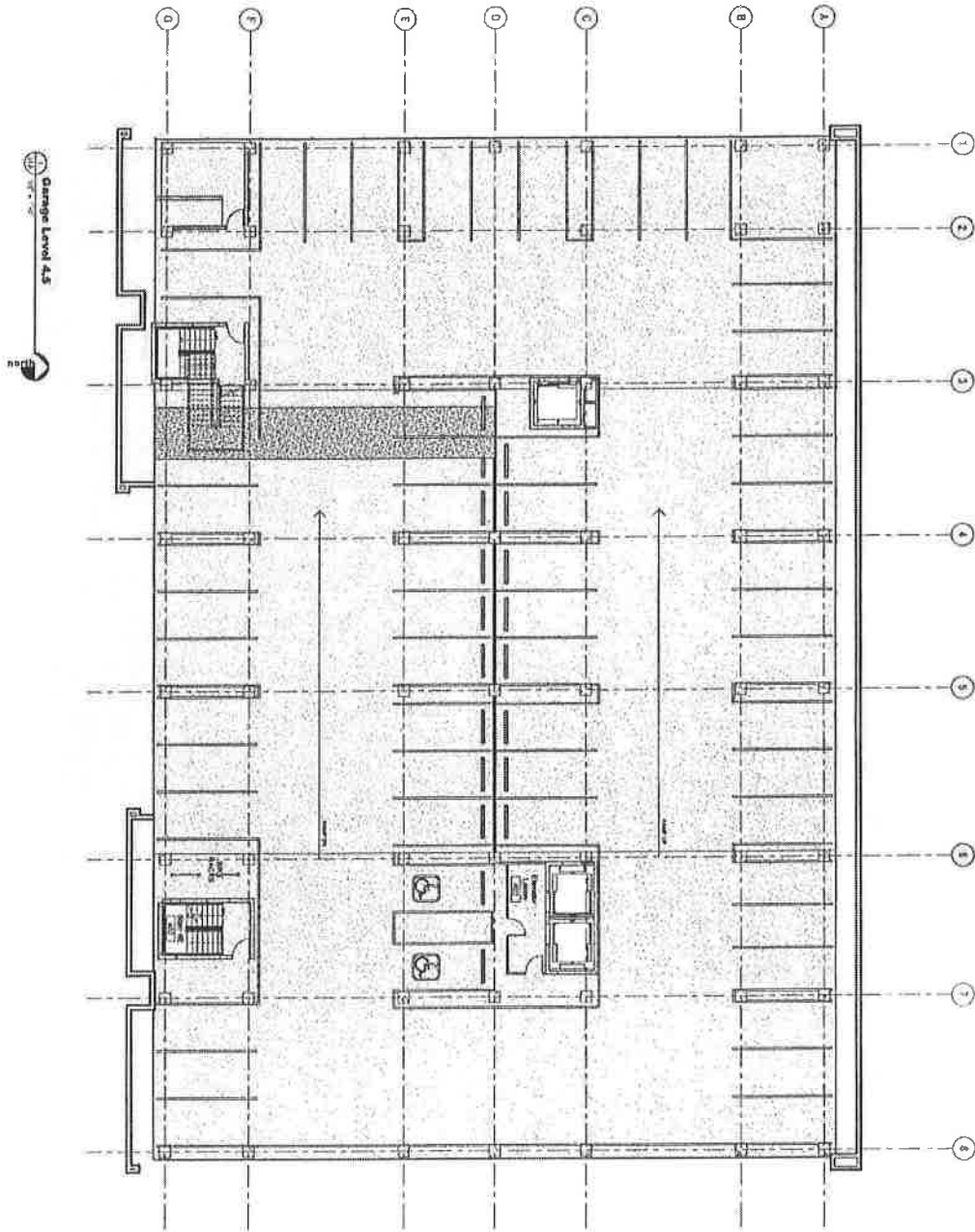


LOYD

FOR

Swaim

ASSOCIATES, LLC  
ARCHITECTS



a1.6

floor plan - level 4.5



**AC TUCSON**  
A Marriott Brand Hotel  
151 East Broadway Blvd.  
Tucson, Arizona 85701

Project Name	1317
Room Count	1449
Date	09/19/14

Swaim Logo	1317
Room Count	1449
Date	09/19/14



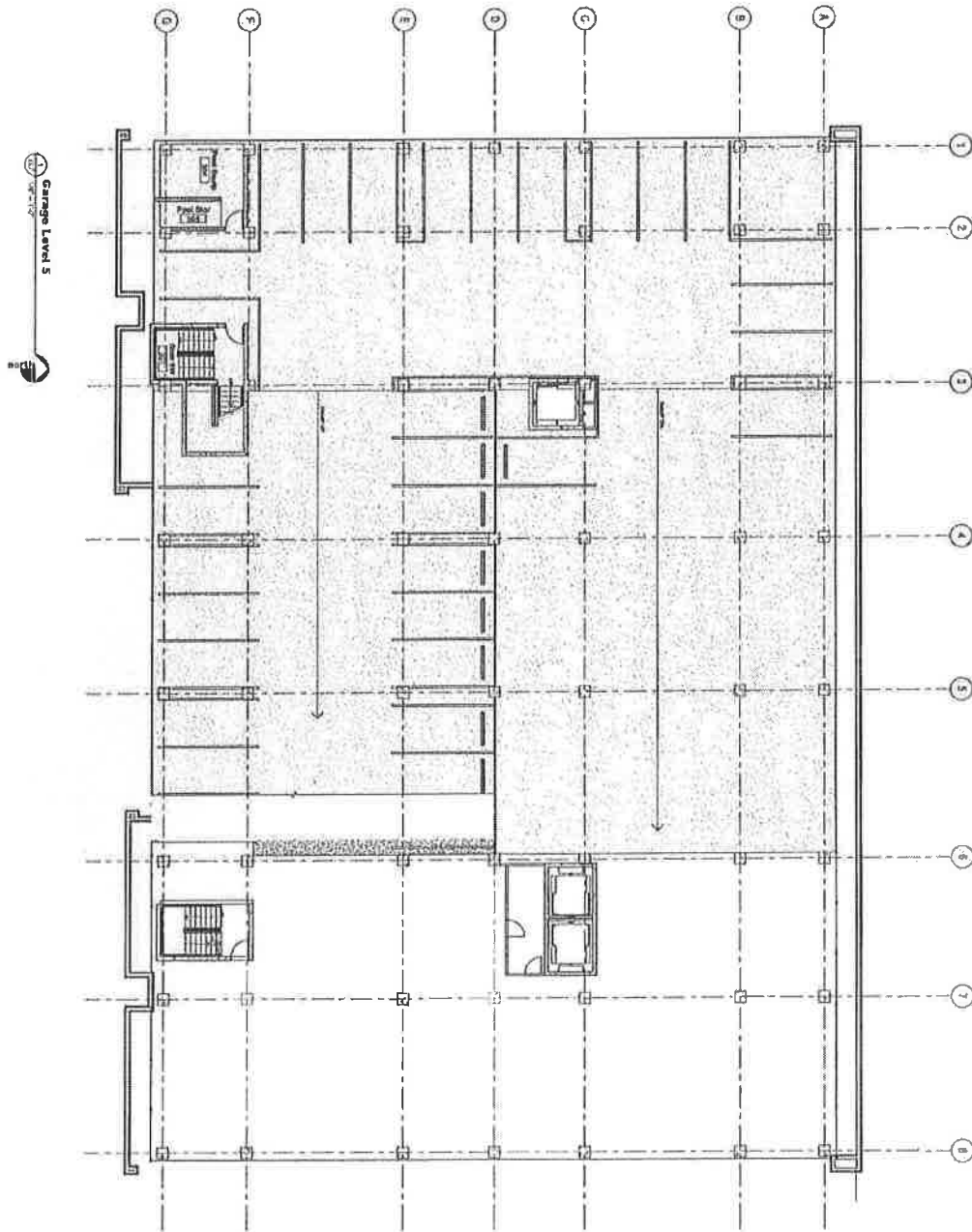
**FORS**

Project Name

Room Count

Date

Swaim Associates, Inc.



a1.7

floor plan - 5th floor



**AC TUCSON**  
A Marriott Brand Hotel  
151 East Broadway Blvd.  
Tucson, Arizona 85701



1317  
1449  
08/13/14

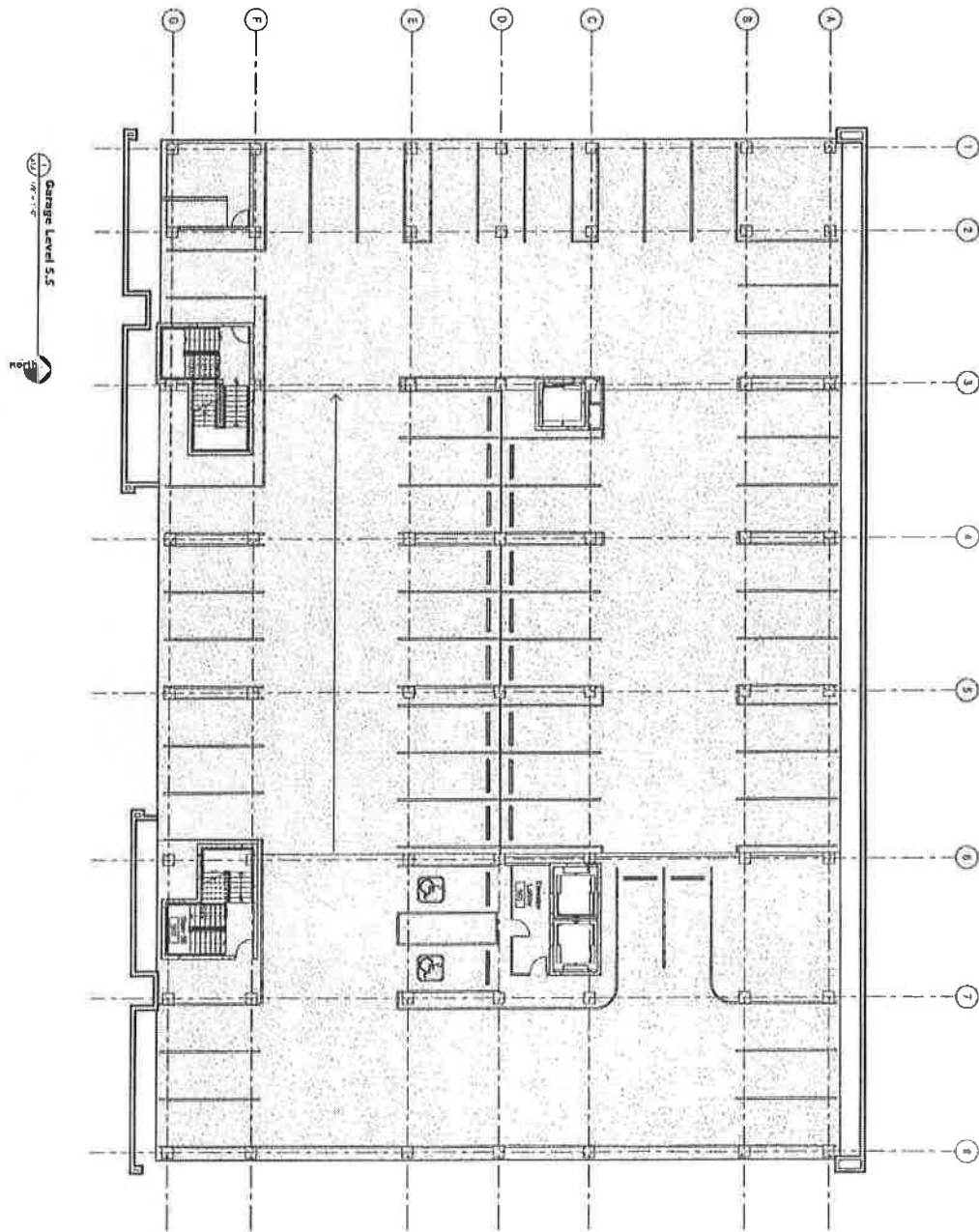


FOR

FOR

Swaim







**EXHIBIT "B"**  
**TO**  
**SALE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(Special Warranty Deed)

When recorded return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SPECIAL WARRANTY DEED**

For valuable consideration, receipt of which is hereby acknowledged, 5 North 5<sup>th</sup> Hotel, LLC, an Arizona limited liability company ("Grantor"), conveys to Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona ("Grantee"), the real property situated in Pima County, Arizona, as described in the attached Exhibit "A," which is incorporated by this reference, together with all appurtenant rights and privileges (collectively, the "Property").

**SUBJECT TO:** All non-delinquent taxes and other assessments, reservations in patents, reserved water rights, and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, and such facts as would be disclosed by inspection or accurate ALTA survey of the Property (including all optional Table A items).

Grantor hereby warrants and defends the title to the Property, as against all acts of the Grantor and no others, subject to the matters above set forth.

Dated: \_\_\_\_\_, 201\_\_.

"Grantor"

5 North 5<sup>th</sup> Hotel, LLC, an Arizona limited liability company

By: \_\_\_\_\_  
M. Scott Stiteler, its manager

STATE OF ARIZONA            )  
  ) ss.  
County of Pima                )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by M. Scott Stiteler, the manager of 5 North 5<sup>th</sup> Hotel, LLC, an Arizona limited liability company, who executed the foregoing on behalf of company, being authorized so to do for the purposes therein contained.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT "C"**  
**TO**  
**SALE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(Lease and Purchase Right Agreement)

**LEASE AND PURCHASE RIGHT AGREEMENT**

This Lease and Option Agreement (this "Lease") is made and effective as of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between Rio Nuevo Multipurpose Facilities District ("Landlord"), and 5 North 5th Hotel, LLC ("Tenant").

**BACKGROUND**

Landlord has, concurrent herewith, acquired the Premises (as defined below) from Tenant. Landlord desires to lease the Premises to Tenant, and Tenant desires to lease such property from Landlord, in accordance with the terms and conditions of this Lease. The "Premises" consist of a certain parking garage and related improvements which are located on that parcel of real property having a street address of \_\_\_\_\_, Tucson, Arizona 85701, and which is legally described as Units \_\_, \_\_, \_\_, and \_\_, according to the Plat of \_\_\_\_\_, recorded in Book \_\_ of Maps and Plats, page \_\_, official records of Pima County, Arizona ("Plat").

**1. BASIC LEASE PROVISIONS**

**1.1 Terms.**

- (a) Commencement Date: The Effective Date
- (b) Address of Landlord: 400 West Congress, Suite 152  
Tucson, Arizona 85701  
Attn: Chairperson
- (c) Address of Tenant: 2140 West Moore Road  
Tucson, Arizona 85755  
Attention: Ms. Chris Hodgson
- (d) Expiration Date: The earlier of (i) seven years following the Commencement Date, or (ii) December 31, 2024, subject to Section 3.2

**2. PREMISES**

**2.1 Premises.** Landlord leases and rents to Tenant, and Tenant accepts from Landlord, subject to and with the benefit of the terms and provisions of this Lease, the Premises.

**2.2 Possession.** Tenant acknowledges that Tenant has had full opportunity prior to the date

of this Lease to evaluate the condition and acceptability of Premises. In accordance with Section 5.4, the Premises are leased to Tenant AS IS. Tenant's possession of the Premises shall constitute Tenant's acknowledgment that the Premises is in good and satisfactory condition and repair when occupied. Tenant acknowledges that Landlord is not obligated to provide any improvements to the Premises, either by the beginning of or at any time during the Term.

### **3. TERM**

**3.1 Initial Term.** The Initial Term of this Lease will be the period commencing on the Commencement Date and expiring on the Expiration Date, unless earlier terminated in accordance with this Lease.

**3.2 Option to Extend.** Tenant is granted the right to extend the term of this Lease for four (4) periods of five (5) years (each, an "Option Period") on the terms and conditions set forth herein; provided, however, that such right to extend for the Option Period (the "Option") may be exercised only if Tenant is not in default under this Lease. The words "Lease Term" or "Term" as used in this Lease shall mean the Initial Term of this Lease as may be extended by Tenant pursuant to this Section. To exercise the Option described in this Section, Tenant shall notify Landlord in writing no later than ninety (90) calendar days prior to the expiration of the Initial Term or prior Option Period. If Tenant exercises its Option as provided herein, all of the terms and conditions of this Lease shall apply during the Option Period, including but not limited to Tenant's obligation to pay Additional Rent and other charges and expenses provided for in the Lease; provided that Minimum Rent during the particular Option Period shall be determined in accordance with Section 4.2. At Landlord's request, prior to the commencement of an Option Period, Tenant shall execute, acknowledge and deliver to Landlord an Amendment to Lease evidencing Tenant's exercise of its Option right and setting forth the commencement and expiration dates of the Option Period and term of the Lease, and the Minimum Rent payable during the Option Period.

**3.3 Delivery of Premises.** Tenant hereby accepts delivery of the Premises, and agrees that the Premises have been delivered to Tenant without representation or warranty as to the suitability of the Premises for the conduct of Tenant's business or for any other purposes.

### **4. RENT**

**4.1 Minimum Rent.** Tenant shall pay to Landlord during the Initial Term, without notice or demand and without any offset or deduction, as fixed monthly minimum rent the sum each month equal to \$80.00 multiplied by the number of parking spaces existing within the Premises from time to time, which number shall not be less than 195 or more than 205 ("Minimum Rent"), which Minimum Rent shall be paid in advance on or before the first day of each calendar month of the Lease Term commencing with the Commencement Date. Notwithstanding the foregoing, Landlord and Tenant agree that Minimum Rent shall be abated during the first six (6) months of the Initial Term.

**4.2 Rent During Extension Term.** The Minimum Rent payable by Tenant under this Lease for each month during any year within the first Option Period will equal the sum of \$100.00 multiplied by the number of parking spaces existing within the Premises from time to time, which number shall not be less than 195 or more than 205. During each of the remaining three

(3) Option Periods, Minimum Rent shall equal the "Fair Rental Value" of the Premises at the inception of the Option Period, as determined below. Concurrent with Tenant's delivery of written notice of its exercise of the second, third and fourth Options (as applicable), Tenant shall deliver to Landlord its determination of the Fair Rental Value of the Premises. If Landlord disputes Tenant's determination of Fair Rental Value, Landlord shall propose its own estimate of the Fair Rental Value. If, within ten days following Landlord's submission, the parties cannot agree upon the Fair Rental Value, the parties shall jointly retain an MAI-certified real estate appraiser, whose sole function shall be to determine which of Landlord's or Tenant's estimate of Fair Rental Value is more reasonable, and the appraiser's determination shall be binding and shall constitute the Minimum Rent during such Option Period. Minimum Rent during each Option Period will continue to be paid in equal monthly installments on or before the first day of each calendar month.

**4.3 Additional Obligations.** This Lease is intended to be and shall be construed as a "net lease," pursuant to which Landlord shall receive the Minimum Rent provided in this section without reduction or offset for any other charge or expense, and free and clear of all taxes, impositions, charges or expenses of any nature whatsoever, except as may expressly be the obligation of Landlord hereunder. Tenant shall pay any sales and rental taxes (if applicable), parcel maintenance and repair costs and other obligations described in this Lease, including, without limitation, those described in Sections 5.3, 6, 7, 8 and 9, and Tenant's insurance requirements described in Section 14, which shall be paid by Tenant with respect to and during the Term. Tenant agrees to and shall pay the following costs and charges directly to the appropriate party and before past due or delinquent: all utilities, trash or refuse collection, security, insurance premiums, license, janitorial, maintenance (interior and exterior), costs of daily operation, condominium association assessments or charges, and any other charges of any kind whatsoever incurred by Tenant with respect to the Premises or Tenant's lease of the Premises, except as otherwise expressly set forth in this Lease.

(a) **Taxes.** Landlord and Tenant agree that, because Landlord is a governmental entity, for so long as Landlord is the owner of the Premises, no real estate taxes and assessments will be imposed with respect to the Premises, and thus Tenant shall have no liability therefor. Notwithstanding the foregoing, Tenant shall be responsible for all taxes and license fees as set forth in Section 9 below.

(b) **Costs.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent, unless otherwise specifically provided for in this Lease. If Tenant shall fail to pay any sum of money owed to any party other than Landlord for which it is liable hereunder, or if Tenant shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for thirty (30) days after written notice thereof by Landlord, Landlord may, without waiving such default or any other right or remedy, but shall not be obligated to, make any such payment or perform any such other act to be made or performed by Tenant. All sums so paid by Landlord, together with interest thereon at the Default Rate of Interest (as set forth in Section 15.2(b)) from the date of expenditure by Landlord, shall be payable to Landlord within ten (10) days after written demand; provided, however, that Tenant shall have the right to contest any amount owing to a third party so long as Tenant has adequately protected Landlord against loss, damage or liens as may be reasonably determined by Landlord.

## **5. USE**

**5.1 Permitted Uses.** Tenant may use the Premises for the purpose of operating a parking garage, and attendant uses, and for no other purpose without the prior written consent of Landlord.

**5.2 Compliance with Laws.** Tenant agrees to comply with all applicable laws, ordinances, and governmental rules and regulations in connection with its use of the Premises.

**5.3 No Representations.** Except as expressly set forth in this Lease, Tenant acknowledges that Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business or for any other purposes. Tenant represents and warrants that it has inspected the Premises fully and has found it suitable for Tenant's purposes. Tenant acknowledges and agrees that, except as otherwise expressly provided in this Lease, Tenant executes this Lease and agrees to take possession of the Premises subject to conditions, reservations, restrictions, easements, encumbrances, liens and all matters of record, as well as existing laws and zoning ordinances, and use permits, and Tenant, by execution of this Lease, acknowledges that it is familiar with the same, and that it has examined the Premises and hereby accepts the same in its AS IS condition, and without any representation or warranty whatsoever on the part of Landlord as to the present or future condition of the Premises or the condition of any improvements thereon.

## **6. MAINTENANCE OF PREMISES**

**6.1 Maintenance and Repair by Tenant.** Tenant shall at all times throughout the Lease Term at its sole cost and expense keep the entire Premises in good condition and repair, and shall keep the paint, mechanical, plumbing and electrical systems and equipment, utility lines and connections to the Premises, fixtures and equipment (including lighting) in good order, condition, and repair. Landlord shall make available to Tenant, and shall assist Tenant in enforcing, any warranties available to Landlord with respect to the Premises and the construction thereof, including the mechanical elements.

**6.2 Failure to Maintain by Tenant.** If Tenant fails to keep and preserve the Premises as set forth in Section 6.1, and after which Landlord has given Tenant notice of such failure, Landlord may, at its option, put or cause the same to be put in the condition and state of repair agreed upon, and in such case, upon receipt of written statements and copies of invoices from Landlord's contractors and/or vendors, Tenant shall promptly pay the entire cost thereof, together with an administrative and mobilization expense not to exceed 15% of all such costs. Landlord shall have the right, without liability, to enter the Premises for the purpose of making such repairs upon the failure of Tenant to do so.

## **7. UTILITIES AND SERVICES**

**7.1 Tenant's Obligations.** Tenant shall pay before delinquency, at its sole cost and expense, all charges for water, electricity, telephone service, and sewer service attributable to the Premises, and all other services or utilities used in, upon or about the Premises by Tenant from the Commencement Date and throughout the Lease Term.

**7.2 Interruptions.** Landlord shall not be under any responsibility or liability for the quality, quantity or impairment, stoppage or other interruption of service involving any utilities described in this Section 7. Landlord shall not be liable to Tenant in damages or otherwise if such utilities or services are interrupted or terminated because of repairs, installations, improvements or any cause except solely on account of Landlord's gross negligence.

**8. PERSONAL PROPERTY TAXES.** Tenant shall pay or cause to be paid, before delinquency, any and all taxes which are levied or assessed and/or which become payable during the Lease Term upon all or any part of the equipment, furniture, trade fixtures and other personal property located on or within the Premises.

**9. LICENSES AND TAXES.** Tenant shall be liable for, and shall pay throughout the Lease Term all license and excise fees and occupation taxes covering the business conducted on the Premises. Any tax on rents payable under this Lease or rents accruing from use of the Premises or a tax in any form against Landlord because of, or measured by, income derived from the leasing or rental of the Premises shall be paid by Tenant, either directly or through Landlord.

## **10. ALTERATIONS**

**10.1 Alterations by Tenant.** Tenant shall not make any material alterations, additions or improvements in or to the Premises costing in excess of \$100,000 without the prior written consent of Landlord, in its reasonable discretion. Landlord shall approve or disapprove of Tenant's plans within twenty-five (25) days of their submittal to Landlord by Tenant. Any such alterations, additions, or improvements (collectively, "Tenant's Alterations") shall be made at Tenant's sole cost and expense and shall be completed expeditiously and in compliance with all current and future laws, statutes, rules, ordinances, regulations and stipulations, including, without limitation, the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) (the "ADA"). Tenant, at its sole cost and expense, shall secure all governmental permits, approvals or authorizations required in connection with any such work and shall defend, indemnify and hold Landlord harmless for, from and against any and all liability, cost, damages (including any damage to the Premises), expenses (including reasonable attorneys' fees) and any and all liens resulting therefrom. On the last day of the Term of this Lease all alterations, additions and improvements, except trade fixtures, appliances, and equipment which are not or do not become a part of the Premises shall immediately become the property of Landlord. Landlord's review and/or approval of any request for alterations, additions or improvements in or to the Premises, and/or the plans or specifications with respect thereto, shall create no responsibility or liability on the part of Landlord, nor shall such review or approval evidence or constitute a representation or warranty by Landlord with respect to the action or undertaking approved or the completeness, accuracy, design sufficiency or compliance of such plans or specifications with laws, ordinances, rules and/or regulations of any governmental agency or authority.

**10.2 Standards of Alterations.** All Tenant's alterations will be designed, engineered, constructed, furnished, and installed by a reputable licensed general contractor, designer, architect, space planner, engineer, and/or construction manager (as applicable, referred to as "Tenant's Contractor") employed by Tenant upon the following terms and conditions: (i) Tenant will perform and complete Tenant's alterations in accordance with the approved plans, and

Tenant's alterations will be performed and completed at Tenant's sole cost and expense by Tenant's Contractor; (ii) Tenant will provide lien waivers to Landlord for services or materials used in performing Tenant's alterations; (iii) upon approval of Tenant's plans in accordance with the provisions of this Section 10, Tenant, through Tenant's Contractor, will commence and diligently pursue completion of Tenant's alterations; and (iv) no improvements may be installed by Tenant unless and until Tenant has submitted to Landlord certificates of insurance evidencing the insurance described in Section 14, below.

## **11. LIENS AND ENCUMBRANCES**

**11.1 Liens.** Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant (including obligations arising out of claims or suits for personal injury or property damage on the Premises). Tenant retains the right to contest any lien or encumbrance upon the Premises.

**11.2 Encumbrances.** Tenant shall not cause or allow to be placed, filed, or recorded against the title to the Premises any mortgage, deed of trust, security agreement, financing statement or other encumbrance; and further, in no event shall the lien of any mortgage, deed of trust or other security agreement or financing statement of Tenant cover the Premises, or any part thereof, nor any leasehold improvements, alterations, additions or improvements thereto, except trade fixtures, appliances and equipment which are owned by Tenant and which are not, and which do not become, a part of the Premises.

**12. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, nor sublet the whole or any part of the Premises (each, an "Assignment"), without the prior written consent of Landlord, in its reasonable discretion; provided that Landlord's consent shall not be required for any assignment of this Lease or sublet of the Premises to (i) the owner and/or operator of the hotel facility adjacent to the Premises, or (ii) the Lender, as defined below, including through the exercise of Lender's rights as set forth in a collateral assignment of this Lease given by Tenant to Lender; provided that any assignee or sublessee shall be fully liable for all of Tenant's obligations hereunder. The consent by Landlord to an Assignment shall not constitute a waiver of Landlord's right to consent or withhold its consent to any other or further Assignment.

## **13. INDEMNIFICATION**

**13.1 Tenant Indemnification.** Unless solely caused by the gross negligence of Landlord, Tenant will indemnify, defend and hold Landlord and Landlord's officers, board members, and agents harmless for, from, and against all penalties, costs, suits, claims, demands, causes of action, real or claimed damages, liability (including liability for death, bodily injury, personal injury, or property damage), and expenses (including attorney fees) arising out of: (i) any occurrence in, upon, or at the Premises, the occupancy or use by Tenant of all or any part of the Premises, or any act or omission of Tenant; (ii) the condition of or any defect in Tenant's furniture, fixtures, or equipment; or (iii) any breach or default in the performance of any obligation to be performed by Tenant under this Lease. The limits of the liability insurance policy required in Section 14.1(a) will not limit the liability of Tenant under this indemnity. Tenant will give prompt notice to Landlord in case of any casualty event or accident in the Premises. If Landlord is made a party to any litigation commenced by or against Tenant that is

covered by the indemnity described above, Tenant will pay to Landlord all costs, expenses and reasonable attorney's fees incurred by Landlord.

**13.2 Landlord Indemnity.** Landlord agrees to indemnify and hold harmless Tenant for, from and against any and all claims, demands, costs, penalties, damages and expenses (including attorney fees and defense costs) made by third parties against Tenant for personal injury or property damage caused by the gross negligence of Landlord in or about the Premises.

**13.3 Survival.** The obligations of Tenant and Landlord under this Section arising by reason of any occurrence taking place during the term of this Lease shall survive the expiration or earlier termination of this Lease.

#### **14. INSURANCE & CASUALTY DAMAGE**

**14.1 Insurance.** Tenant and Landlord agree to maintain those types and amounts of insurance described below.

(a) During the Term, Tenant, at Tenant's own cost and expense, will maintain continuously in full force and effect the following types of insurance:

(1) Commercial general liability insurance covering the Premises and Tenant's activities on the Premises on an occurrence basis against claims for bodily injury, property damage, personal injury, and death with limits of at least \$2,500,000 combined single limit, together with umbrella excess liability coverage of not less than \$10,000,000. The commercial general liability insurance must include broad form contractual liability and completed operations coverage for the limits identified above and fire damage legal liability insurance of at least \$500,000. The maximum limits of the commercial general liability policy of insurance will not limit or diminish Tenant's indemnity requirements under this Lease.

(2) Property insurance with "all risk" coverage for fire, earthquake, flood, vandalism, malicious mischief, sprinkler leakage, glass, boiler, and machinery (if applicable) in an amount adequate to cover the cost of replacement Tenant's personal property, trade fixtures, furnishings, equipment, tenant improvements, and other contents in the Premises.

(3) Workers' compensation insurance with Arizona statutory minimums and employers' liability of \$100,000.

(b) The insurance will: (i) be issued in the name of Tenant with Landlord and its managing agent or other designee named as an additional insured on the commercial general liability insurance and property insurance; (ii) be written by one or more responsible insurance companies authorized to do business in the State of Arizona with a Best's rating of at least A-/VII or comparable rating satisfactory to Landlord; and (iii) be in a form, including the amount of any deductible, satisfactory to Landlord. All insurance must contain endorsements that: (I) the insurance may not be canceled or amended with respect to Landlord (or its designees) except upon ten (10) days prior written notice to Landlord (and its designees) by the insurance



company; (II) Tenant will be solely responsible for payment of premiums and Landlord (or its designees) will not be required to pay any premiums for the insurance; and (III) in the event of payment of any loss covered by the policy, Landlord or its designees, as applicable, will be paid first by the insurance company for its loss.

(c) Thirty (30) days prior to the expiration of any policy of insurance, Tenant will pay the premiums for renewal insurance and deliver to Landlord or to any mortgagee of the Premises designated by Landlord a binder for the renewal policies with evidence of payment of the premiums, and Tenant will deliver to Landlord, prior to expiration of the binder, a certificate of insurance confirming the coverage. Tenant, however, may contract with the insurance company to pay the premiums on a monthly basis if the insurance policies provide that the insurance may not be canceled or amended with respect to Landlord (or its designees) except upon thirty (30) days prior written notice to Landlord (and its designees) by the insurance company. If any premiums are not paid and the binders and certificates are not delivered, Landlord may procure and/or pay for the insurance, and the amount paid by Landlord will be due and payable by Tenant.

(d) Tenant will not violate, nor permit to be violated, any of the conditions or provisions of any insurance policies required to be maintained by Tenant, and Tenant will satisfy the requirements of the insurer so that the policies remain in good standing and acceptable to Landlord and so that the insurer will continue to write the insurance.

(e) Tenant will cooperate with Landlord and any mortgagee of the Premises in the collection of any insurance proceeds that may be due upon any loss covered by Tenant's insurance policies, and Tenant will execute and deliver to Landlord and any mortgagee any proof of loss or other instruments that may be required for the purpose of facilitating the recovery of any insurance proceeds.

(f) Landlord and Tenant agree that the commercial general liability insurance and the property insurance carried by either on the Premises or the furniture, fixtures, and equipment or contents of the Premises, will contain a full waiver of subrogation by the insurer against the other and its assigns. Tenant's commercial general liability insurance will be primary insurance.

(g) No material work, alterations or construction may be commenced unless and until Tenant has submitted to Landlord certificates of insurance evidencing that Tenant's Contractor has in full force and effect: (i) commercial general liability insurance in an amount of at least \$1,500,000 combined single limit, including premises and operations personal injury coverage, broad form contractual liability coverage, and completed operations coverage; (ii) property insurance with builders risk and all-risk coverage and broad form contractual liability coverage; (iii) comprehensive automobile liability insurance covering bodily injury and property damage; and (iv) workmen's compensation insurance against liability arising from claims of workmen. Tenant shall cause the insurance described above to be maintained during the period any construction is being performed on the Premises, and this insurance shall be in addition to that required under the above provisions of this Section.

(h) Landlord agrees to procure and maintain, throughout the Term and at its expense, property insurance with "all risk" coverage for fire, earthquake, flood, vandalism,

malicious mischief, sprinkler leakage, glass, boiler, and machinery (if applicable) in an amount adequate to cover the cost of replacement of the Premises.

**14.2 Destruction of Premises.** If the Premises, or any part thereof, is partially destroyed by fire, the elements, accident, or other casualty (each, a "casualty event") and such damage can be repaired within 180 days of the date of the occurrence of a casualty event with proceeds of insurance, this Lease shall remain in full force and effect, and the proceeds of insurance applicable to such loss shall be used to promptly repair such damage. If the Premises is damaged by a casualty event to such extent as to make it untenable for a period of 180 days or more from the date of such occurrence and such damage cannot be repaired or the Premises restored within such time (in the good faith estimation of Landlord), this Lease shall terminate at the option of Tenant upon written notice given within thirty (30) days after the occurrence of such a casualty event. All insurance proceeds resulting from any casualty loss to the Premises shall be the property of Landlord.

**14.3 Abatement; No Surrender.** Except as specifically provided in this Section 14, this Lease will not terminate and will not be affected in any manner by reason of the total or partial destruction or damage of the Premises or any resulting untenability of the Premises, and the rent reserved in this Lease, as well as all other charges payable will be paid by Tenant in accordance with the terms of this Lease. If, however, the Premises become untenable by reason of a casualty event, Tenant will be entitled to a proportionate reduction in the Minimum Rent during the period the Premises are untenable. The proportionate reduction will be equal to the percentage of interference with Tenant's ability to carry on business on the Premises. Tenant will not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience or annoyance caused by any casualty event.

## **15. DEFAULT BY TENANT**

**15.1 Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) **Failure to Pay Rent.** The failure by Tenant to make any payment of Minimum Rent, or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of thirty (30) days after Tenant's receipt of written notice thereof by Landlord.

(b) **Failure to Perform.** The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than as described in Section 15.1(a), where such failure shall continue for a period of 60 days after Tenant's receipt of written notice thereof by Landlord; provided, that if such cure reasonably requires more than 60 days to complete, then Tenant shall not be in default if Tenant shall promptly commence the cure of such default and diligently pursue such cure to completion.

(c) **Bankruptcy; Other.** The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is

dismissed within ninety (90) days of filing); any Assignment in contravention of Section 12; or the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within ninety (90) days after appointment of said trustee or receiver.

## **15.2 Remedies in Default**

(a) **General.** Upon any default by Tenant, then Landlord, in addition to any other rights or remedies it may have by statute or otherwise, will be entitled to pursue any one or more of the following remedies: (i) Landlord may terminate this Lease and Tenant's right to possession of the Premises by specific written election; (ii) Landlord may reenter and retake possession of the Premises through judicial process or through self-help by lock out under A.R.S. § 33-361(A) and remove any or all persons or property from the Premises; (iii) Landlord may commence a forcible entry and detainer action for recovery of possession of the Premises and all due and unpaid rent under A.R.S. § 33-361(A); (iv) Landlord may commence an action for ejectment under A.R.S. § 12-1251; (v) Landlord may enforce any common law, statutory, or contractual Landlord's lien under Arizona law, A.R.S. § 33-361(D); and (vi) Landlord may commence an action for rent under A.R.S. § 12-1271. The remedies established above will be in addition to all other legal remedies available to Landlord under Arizona law and not in lieu of any other remedies. Landlord and Tenant agree that, unless Landlord has made a specific written election to terminate the Lease, Landlord will not be deemed to have elected to terminate the Lease as a result of Landlord's exercise of any of its remedies outlined in clauses (ii) through (vi).

(b) **Default Rate of Interest.** Tenant shall be obligated to pay a "Default Rate of Interest" per annum on all monies due Landlord hereunder after the expiration of any cure or notice period for the payment of such sum, which Default Rate of Interest shall be ten percent (10%) per annum from the date such sum was due until the day of payment.

**15.3 Remedies Waiver.** It is understood and agreed that Landlord's exercise of any right or remedy due to a default or breach by Tenant shall not be deemed a waiver of or to alter, affect or prejudice any right or remedy which Landlord may have under this Lease or by law or in equity. Neither the acceptance of Minimum Rent nor any other acts or omissions of Landlord at any time or times after the happening of any event authorizing the cancellation of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel or terminate this Lease upon the written notice provided for herein at any time that cause for cancellation or termination may exist, or be construed so as at any time to stop Landlord from promptly exercising any other option, right, or remedy that it may have under any term or provision of this Lease, at law or in equity. Notwithstanding the foregoing, Landlord agrees to use its reasonable efforts to mitigate its damages resulting from a default by Tenant.

**15.4 Lender Rights.** Notwithstanding anything to the contrary in this Lease, in the event of a material breach by Tenant, Landlord will give written notice of such breach to Tenant and also to any mortgage lender (a "Lender") that has provided any financing to Tenant in connection with any adjacent real property described in the Plat ("Mortgaged Property") and with respect to whom Tenant has provided a written notice to Landlord (which notice shall include the name and notice address of such Lender) that such Lender is entitled to receive notices of default

hereunder. Within thirty (30) days after Landlord's delivery of such default notice to all required parties, any of the noticed parties shall have the right to cure the default; provided, however, that if such default is non-monetary (i.e. any obligation hereunder except for the Tenant's obligations under Section 4 above) and cannot be cured within said 30-day period, then so long as the curing party commences such cure and uses reasonable diligence and good faith to effectuate such cure as soon as reasonably possible thereafter, but in any event, not later than one hundred (180) days after notice of such non-monetary default (subject to any additional period of time which may be reasonably required by the Lender in order to obtain possession or control of the Mortgaged Property), then Landlord shall not terminate this Lease. Any monetary default must be cured within 30 days from receipt of notice. If any Lender desires to cure such non-monetary default, but in order to effect such cure desires to appoint a receiver for the Mortgaged Property, acquire possession of the Premises or Mortgaged Property, or otherwise enforce its rights under its loan documents, then the Lender shall have such additional period of time (in addition to the cure period set forth in the immediately preceding sentence) to permit the Lender to enforce its rights under its loan documents. In addition, if such Lender acquires title to the portions of the Mortgaged Property on which it has a lien as a result of its enforcement of its loan documents, the Lender shall not be deemed to have assumed any obligations of the Tenant under the Lease first arising or accruing prior to the date that the Lender acquires title thereto (other than the obligation to pay Minimum Rent and other amounts due under Section 4 above). Landlord hereby expressly acknowledges and agrees that, so long as any Lender is diligently pursuing a cure of the non-monetary default by Tenant under this Lease in accordance with this Section 15.4, and/or any Lender is pursuing enforcement of its rights under its loan documents, Landlord shall not exercise its rights or remedies available under the terms of this Lease as a result of the Tenant's default, including, without limitation, termination of this Lease. However, if for any reason, either the Tenant fails to cure such non-monetary material default as provided herein, or any Lender elects to cure but fails to diligently pursue a cure of the Tenant's non-monetary default as provided above, then Landlord shall be entitled, at its option and as its sole right and remedy, to terminate this Lease. Notwithstanding the foregoing, Lender may exercise its Section 15.4 rights if and only if all amounts due under Section 4 above are paid in full on each due date after the initial notice of default.

**16. DEFAULT BY LANDLORD.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord under this Lease within a reasonable time, but in no event, except as otherwise provided for in this Lease, less than 60 days after written notice by Tenant to Landlord. Said notice shall specify wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than 60 days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 60 day period and thereafter diligently prosecutes the same to completion.

## **17. EMINENT DOMAIN**

**17.1 Total Taking.** If all of the Premises is taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the earlier of (i) the date Tenant is required to vacate the Premises, or (ii) the date title passes to the condemning authority, and upon either such date of termination, all Minimum Rent, and other costs due hereunder shall be paid to that date. The term "eminent domain" shall include the taking or damaging of property by, through or under any governmental or quasi-governmental

authority, and any purchase or acquisition in lieu thereof, whether or not the damaging or taking is by the government or any other person.

**17.2 Partial Taking.** If more than twenty-five percent (25%) of the square feet of the Premises shall be taken or appropriated, or if the access to the Premises is materially and adversely affected, then Tenant may within thirty (30) days of such partial taking: (i) notify Landlord of Tenant's election to terminate the Lease; or (ii) notify Landlord of Tenant's election to continue this Lease. If the Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Minimum Rent shall be reduced in the same proportion as the square feet taken within the Premises bears to the total square feet of the Premises. In no event shall Landlord be obligated to restore or replace any structures or improvements taken or damaged by condemnation.

**17.3 Damages.** Landlord reserves all rights to the entire damage award or payment for any taking by eminent domain, and Tenant shall make no claim whatsoever against Landlord for damages for termination of its leasehold interest in the Premises or for interference with its business. Tenant shall, however, have the right to claim from the condemning authority all compensation that may be separately recoverable by Tenant on account of any loss incurred by Tenant.

## **18. PURCHASE OF PREMISES.**

**18.1 Grant.** Landlord hereby obligates itself to sell and Tenant hereby obligates itself to purchase all but not less than all of the Premises, subject to the terms of this Section 18 and compliance with the terms and conditions of this Lease ("Purchase Right"), which Purchase Right may be exercised by Tenant during the period commencing on the date that is five years from the Commencement Date until the expiration of the Initial Term.

(a) The purchase price for the Premises shall be the sum of \$4,300,000.00, less the Offset, as defined below ("Purchase Price"). The "Offset" shall equal fifty percent (50%) of the Minimum Rent payable by Tenant throughout the Term of this Lease, through the closing of the Purchase Right ("Rent Credit"), conditioned upon Landlord receiving state transactional privilege taxes pursuant to A.R.S. §42-5031, that are collected within the boundaries of the real property subject to the Plat, in an amount not less than three times the Rent Credit ("TIF Threshold"); provided that, if the TIF Threshold is not met, then the Rent Credit shall be proportionately reduced by the difference between one (1) and a fraction, the numerator of which is the TIF funds collected with respect to the property subject to the Plat and the denominator is three times the Rent Credit. Landlord shall provide to Tenant (i) the calculation of Landlord's determination of the TIF Threshold, and (ii) the right to inspect and audit Landlord's books and records with thereto.

(b) If Tenant has not exercised the Purchase Right by the expiration of the Initial Term, and has exercised its option for the first Option Period, Tenant shall deposit with Landlord the sum of \$1,000,000 ("Part Payment") within thirty (30) days from the commencement of such Option Period. The Part Payment shall be applicable to the Purchase Price, provided that the Purchase Right has been elected, and the purchase

of the Premises shall have been consummated, prior the expiration of the first Option Period (except on account of a default, failure to perform by Landlord, or existence of a title exception not constituting a Permitted Exception, as defined below). If Tenant has not closed the purchase of the Premises prior to the expiration of the first Option Period (subject to the preceding parenthetical), the Part Payment shall be retained by Landlord as its liquidated damages and the Purchase Right shall terminate. If Tenant fails to pay the Part Payment within 30 days from the commencement of the Option Period (the "Part Payment Deadline"), Landlord may elect to terminate the Purchase Right and may sue for specific performance. All rights and remedies of Landlord under this Section are cumulative, and the exercise of any one shall not be an election excluding Landlord at any other time from exercising a different or inconsistent remedy; provided, however, if Landlord seeks to enforce the remedy of specific performance and fails to file suite for its remedy of specific performance within 60 days following the Part Payment Deadline, then Landlord will be deemed to have waived its remedy of specific performance.

**18.2 Conditions.** The Purchase Right described in this Section 18 and its exercise by Tenant is conditioned upon Tenant fully performing its obligations under this Lease through the dates of the exercise of the Purchase Right and the closing of the sale. To exercise the Purchase Right granted pursuant to this Section, Tenant shall execute and deliver to Landlord written notice of its intention to exercise the Purchase Right not more than one year and not less than 90 days from the expiration of the Initial Term, or at any time during the first Option Period, as applicable. Except as set forth in Section 18.5, the delivery of such notice will obligate Tenant to purchase, and for Landlord to sell, the Premises pursuant to the terms and conditions of this Section (provided that the Purchase Right has not been otherwise terminated due to Tenant's default).

**18.3 Purchase Price.** The Purchase Price will be payable in cash or certified funds as directed by Landlord. Escrow will be opened at First American Title or its successor in interest.

**18.4 Closing.** If Tenant elects the Purchase Right during the time between five years from the Commencement Date and the expiration of the Initial Term, closing shall occur within 90 days of Tenant's written notice of such election. If Tenant elects the Purchase Right during the first Option Period, closing shall occur 90 days from date of the notice sent by Tenant. At closing, Landlord will convey the Premises to Tenant by special warranty deed, subject only to those exceptions reflected on Landlord's title policy issued on or near the Commencement Date (a copy of which Tenant has received) and any other matters to which Tenant has consented in writing ("Permitted Exceptions"). Landlord and Tenant will each pay fifty percent (50%) of the costs imposed by the title insurance company including escrow fees, and any documentary, transfer and recording fees and charges. Landlord will pay the cost of a standard title insurance policy and Tenant shall be responsible for the cost of any extended coverage and endorsements. At closing, Landlord will deliver the special warranty deed and an affidavit of property value. Tenant will pay the Purchase Price to Landlord and execute the affidavit of property value.

**18.5 Title Insurance.** As soon as practicable after Tenant's election to purchase the Premises, Tenant will cause the title insurance company to issue a commitment for title insurance and will deliver a copy of it to Tenant and Landlord for review. Tenant will have ten (10) days after receipt of the commitment to notify Landlord of any objections to exceptions to title (except the Permitted Exceptions) and Landlord may elect to cause such objections to be

deleted within twenty (20) days after the date on which Landlord receives notification from Tenant. If Landlord is unable or unwilling to secure deletion of those exceptions, or to secure, at its expense, title insurance against them, then Tenant will have the option to rescind its agreement to purchase or to proceed with the purchase and waive any such exception. The closing of the purchase and sale of the Premises shall take place within thirty (30) days after delivery to Tenant of the commitment for title insurance described in this Section 18.5 ("Closing Date"). Prior to the closing, Tenant's obligations under the Lease will continue in full force and effect.

**18.6 Representations.** Tenant acknowledges that in connection with the granting of the Purchase Right and the exercise thereof, Tenant is acting based solely on its knowledge of the Premises (of which Tenant is familiar and has had and will have a full and complete opportunity to inspect). Except for those limited warranties concerning the Premises set forth in the special warranty deed, the Premises will be conveyed to Tenant AS-IS and Landlord disclaims and makes no representations or warranties concerning the Premises.

**19. ACCESS BY LANDLORD.** Without constituting a trespass, eviction, breach of quiet enjoyment, or forcible entry, Landlord will have the right to enter the Premises at any reasonable time to inspect the Premises or to cure any default, and to alter, improve, or repair the Premises without abatement of rent, and Landlord, for the purposes of repair and alteration, may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed so long as the business of Tenant is not interfered with unreasonably.

## **20. SURRENDER OF PREMISES**

**20.1 Surrender of Possession.** On the last day of the Term of this Lease, or on the sooner termination thereof, Tenant shall peaceably surrender the Premises in good condition and repair, ordinary wear, tear and casualty excepted. On or before the last day of the Term of this Lease, or the date of sooner termination thereof, Tenant shall, at its sole cost and expense, remove all of Tenant's personal property, trade fixtures and equipment from the Premises, and all of Tenant's property not removed shall be deemed abandoned. All modification, improvements, alterations, additions and fixtures, other than Tenant's trade fixtures and equipment, which have been made or installed by either Landlord or Tenant upon the Premises shall remain the property of Landlord and shall be surrendered with the Premises as part thereof.

**20.2 Holding Over.** If Tenant remains in possession of the Premises after expiration of this Lease, and without the execution of a new lease, Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month subject to all the provisions, conditions and obligations of this Lease insofar as the same can be applicable to a month-to-month tenancy, with rent escalated to one hundred twenty percent (120%) of the Minimum Rent payable by Tenant immediately prior to the expiration of this Lease.

**21. QUIET ENJOYMENT.** Tenant, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease on its part to be performed, shall have and quietly enjoy the Premises for the Lease Term.

**22. AUTHORITY OF PARTIES.** Each individual executing this Lease on behalf of Landlord and Tenant personally represents and warrants that he is duly authorized to execute and

deliver this Lease on behalf of such entity in accordance with a duly adopted resolution of the board or managers of such entity, authorizing and consenting to this Lease, and resolving that this Lease is binding upon said company in accordance with its terms.

## **23. HAZARDOUS SUBSTANCES**

**23.1 Tenant Covenant.** Tenant represents and warrants to Landlord that Tenant will not generate, store, treat, use, release, or dispose of (collectively, a "release") any hazardous materials on or about the Premises except in compliance with all environmental laws, and any additional conditions imposed by Landlord and only with the express written approval of Landlord. Tenant will obtain, comply with, and provide Landlord with copies of all permits required in connection with the generation, storage, treatment, use, release, or disposal of any hazardous materials. If any hazardous materials are determined to be in, on, under and around the Premises as a result of the actions of Tenant, Tenant will comply promptly with any applicable environmental laws (which may or may not require removal of the material) at Tenant's expense. Tenant will, at Tenant's own expense, comply with all present and future environmental laws affecting Tenant's activities on the Parcel. Tenant will keep the Premises free of any lien imposed pursuant to any environmental laws as a result of Tenant's acts or failure to act under this Lease.

**23.2 Definitions.** As used in the Lease, the term "hazardous materials" means materials regulated under the environmental laws and asbestos, urea formaldehyde foam insulation, petroleum containing products, and any fluid containing polychlorinated biphenyls. As used in this Lease, the term "environmental laws" means all laws enacted by any governmental authorities related in any way to the regulation or protection of the environment including the following, as they may be amended from time to time: the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Resource and Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Clean Water Act (33 U.S.C. §§ 12151 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 3251 et seq.), and the Arizona Environmental Quality Act, including provisions on water quality control (A.R.S. §§ 49-210 et seq.), air quality (A.R.S. §§ 49-401 et seq.), solid waste management (A.R.S. §§ 49-701 et seq.), hazardous waste disposal (A.R.S. §§ 49-901 et seq.), and underground storage tank regulation (A.R.S. §§ 49-1001 et seq.).

**23.3 Removal.** Tenant will be responsible for removing from the Premises any hazardous materials released or put or permitted there by Tenant or its agents or permittees that either Tenant or Landlord is required by law to remove. In addition, Tenant will be responsible for restoring the Premises to its condition immediately prior to the time of the required removal.

## **24. MISCELLANEOUS**

**24.1 Successors or Assigns.** All terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective successors, subtenants, sublessees, concessionaires, and assigns, if any, and upon any persons or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

**24.2 Broker's Commission and Representation.** Tenant represents and warrants that it has incurred no liabilities or claims for brokerage commissions or finders' fees in connection with the



execution of this Lease and that is has not dealt with, and has no knowledge of, any real estate broker, agent, or salesperson in connection with this Lease. The parties acknowledge that Mark Irvin and Alberto Moore are licensed Real Estate Brokers in the State of Arizona and are also members of the Board of Directors of Landlord. Neither Mr. Irvin nor Mr. Moore are receiving any compensation under the terms of this Lease and have no fiduciary duty to Tenant.

**24.3 Estoppel Certificate.** At any time and from time to time during this Lease, Tenant agrees, upon not less than ten (10) business days prior request by Landlord, to execute, acknowledge, and deliver to Landlord a statement in writing certifying to Landlord that: (i) this Lease is unmodified and in full force and effect (or, if there have been modification, that the Lease is in full force and effect as modified and stating the modifications); (ii) the dates to which the rent and other charges have been paid in advance, if any; (iii) there are not any uncured defaults on the part of Landlord under this Lease (or specifying the defaults if any are claimed); (iv) there exist no defenses against enforcement of any provision of the Lease (or, if they exist, the nature of the defenses), (v) the Commencement Date and expiration of the Term; and (vi) any other information that may be reasonably requested by Landlord.

**24.4 Partial Invalidity.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**24.5 No Individual Liability.** The obligations of Landlord under this Lease do not constitute personal obligations of the directors, board members or officers of Landlord, and Tenant will look solely to the real estate that is the subject of this Lease and to no other assets of Landlord for satisfaction of any liability in respect of this Lease.

**24.6 Notices.** All notices, demands, consents, and statements that are required or permitted to be given by either party will be in writing and, to be effective, will be personally delivered or sent by overnight express delivery or mailed by United States certified mail (postage prepaid, return receipt requested) at Tenant's or Landlord's address, as set forth above. Any notice sent to Landlord shall also be sent to:

Mark Collins  
Gust Rosenfeld, PLC  
One South Church Avenue, Suite 1900  
Tucson, AZ 85701  
Telephone: 520-388-4780

Either party may change its address by notice given to the other in the manner set forth in this section. Notices, demands, and statements will be deemed given and received when personally delivered or two (2) business days after they are mailed as provided above or on the next business day after deposit with a recognized overnight express delivery service.

**24.7 Waiver.** The waiver by Landlord or Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or any

subsequent breach of the same or any other term, covenant or condition contained in this Lease. The subsequent acceptance of Minimum Rent, or any other costs hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular sum so accepted.

**24.8 Choice of Law.** This Lease shall be governed by and construed in accordance with the substantive laws of the state of Arizona.

**24.9 Legal Expenses.** If any action or proceeding brought by either party against the other under this Lease, the prevailing party will be entitled to recover attorney fees in the amount the court may determine reasonable. Either party also will be entitled to recover all costs, expenses, and reasonable attorney fees that may be incurred or paid by the party in enforcing the terms of this Lease or in enforcing a judgment in its favor, whether or not the party commences litigation against the other party.

**24.10 Force Majeure.** If Landlord or Tenant is prevented, delayed or stopped from performing any act, undertaking or obligation under this Lease (except the payment of money such as Minimum Rent) by reason of an "event of force majeure" including strikes, lockouts, labor disputes, failure of power, acts of public enemies of this state or the United States of America, riots, insurrection, civil commotion, inability to obtain labor or materials, and/or any other material cause (except financial) beyond the reasonable control of the party whose performance is so prevented, delayed or stopped, then the time for that party's performance shall be extended one (1) day for each day's prevention, delay or stoppage by reason of such event of force majeure, but in no event more than thirty (30) days total.

**24.11 Prior Agreements.** This Lease constitutes the entire agreement of the parties and supersedes all prior agreements or understandings, either written or oral, between the parties with respect to the subject matter. This Lease may not be modified or amended except by written agreement of the parties.

**SIGNATURES ON FOLLOWING PAGE**

The parties have executed this Lease as of the date set forth above.

**LANDLORD:**

RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT,  
a political subdivision of the State of Arizona

**TENANT:**

5 NORTH 5<sup>TH</sup> HOTEL, LLC, an Arizona  
limited liability company

By: \_\_\_\_\_  
Its Secretary

By: \_\_\_\_\_  
Its manager

This Agreement has been submitted to the undersigned attorney for Rio Nuevo, who has determined that this Lease is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Board.

\_\_\_\_\_  
Attorney to Rio Nuevo

**EXHIBIT "D"**  
**TO**  
**SALE AGREEMENT AND**  
**ESCROW INSTRUCTIONS**

(Memorandum of Lease)

When Recorded Return To:  
Mark Collins  
Gust Rosenfeld PLC  
One South Church Avenue, Suite 1900  
Tucson, AZ 85701

**MEMORANDUM OF LEASE**

DATE: \_\_\_\_\_, 20\_\_

PARTIES: Rio Nuevo Multipurpose Facilities District  
52 West Congress Street  
Tucson, Arizona 85701  
Attention: Mark Irvin ("Lessor")

5 North 5th Hotel, LLC  
2140 West Moore Road  
Tucson, Arizona 85755  
Attention: Ms. Chris Hodgson ("Lessee")

1. Lessor has leased to Lessee, and Lessee has leased from Lessor, pursuant to a Ground Lease dated \_\_\_\_\_, 20\_\_ (the "Lease"), certain land more particularly described on Exhibit A attached hereto (the "Premises").

2. The term of the Lease is for an initial term of \_\_\_\_\_ years unless terminated or cancelled earlier in accordance with the terms of the Lease.

3. The Lease will terminate on \_\_\_\_\_.

4. The Lessee has an obligation to purchase the Premises pursuant to the terms of the Lease.

5. All other terms, conditions and agreements contained in the Lease are fully incorporated herein by reference as if fully set forth herein. Copies of the Lease are on file at the offices of Lessor and Lessee.

6. In the event of a conflict between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the date first above written.

**LESSOR**

Rio Nuevo Multipurpose Facilities District,  
a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Its Secretary

ATTEST:

\_\_\_\_\_  
Clerk

State of Arizona

County of Pima

On this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the said State, personally appeared \_\_\_\_\_, the Secretary of Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona, on behalf of the District.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

**Exhibit A to Memorandum of Lease**

*APPENDIX D*

*FORM OF INVESTOR LETTER*

**Certificate of Qualified Investor**

**[To be printed on bank letterhead]**

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

[TRUSTEE]

Re:     \$\_\_\_\_\_ Rio Nuevo Multipurpose Facilities District,  
         Lease Revenue Bonds (Greyhound Project), Series 2016/2017

1.       Please be advised that the undersigned is a Qualified Investor (as hereinafter defined) and is purchasing one of the captioned bonds (hereinafter referred to as the "Bonds"), such Bond, or beneficial interest therein, being in the original aggregate principal amount of \$\_\_\_\_\_, bearing the number R-1. Such purchase is solely for the account of the undersigned, for the purpose of providing a loan to the District and not with an intent for or view to distribution or resale.

2.       In the event that the undersigned transfers such Bond or any part thereof, the undersigned shall comply with all provisions of the Trust Agreement of the Rio Nuevo Multipurpose Facilities District (the "District") authorizing the issuance of the Bonds dated as of \_\_\_\_\_, 20\_\_ (the "Agreement"). The undersigned understands that, unless the transfer restrictions terminate pursuant to the Agreement, a transferee shall be a Qualified Investor or Sophisticated Municipal Market Professional (as defined by the Municipal Securities Rulemaking Board), and must sign a letter in the form of this letter and provide such letter to the Trustee before any transfer of any Bond to such transferee will be registered.

3.       The undersigned acknowledges that it is a qualified institutional buyer, as such term is defined in Rule 144A of the Securities Act of 1933, as amended, or an accredited investor (other than a natural person) as defined in Rule 501 of Regulation D of the United States Securities Exchange Commission) (either of which shall constitute a "Qualified Investor").

4.       The undersigned understands that: (i) the Agreement and the Bonds are not being registered under the Securities Act of 1933, as amended, in reliance upon certain exemptions set forth in that Act, (ii) the Agreement and the Bonds are not being registered or otherwise qualified for sale under the "blue sky" laws and regulations of the State of Arizona or any other state, (iii) any transfer of the Bonds must comply with federal and state securities laws, (iv) any sale or transfer of the Bonds, or interests therein, must be to Sophisticated Municipal Market Professionals or Qualified Investors, (v) the Bonds will not be listed on any stock or other securities exchange, (vi) the Bonds will not carry any bond rating from any rating service, and (vii) the Bonds are not likely to be readily marketable.

5.       The undersigned assumes all responsibility for complying with any applicable federal and state securities laws with respect to any transfer of the Bond or an interest therein by



the undersigned, and agrees to hold the District harmless for, from and against any and all liabilities claims, damages or losses resulting directly or indirectly from such failure to comply.

6. The undersigned acknowledges that the undersigned has had an opportunity and has obtained all information necessary and has evaluated the factors associated with its loan decision and after such evaluation, the undersigned understood and knew that loan in the form of the Bonds involved certain risks, including but not limited to, limited security and source for payment of the Bonds, the status of development and its impact on taxation for payment of the Bonds, and the probable lack of any secondary market for the Bonds. The undersigned acknowledges that it is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independent evaluation of the risks involved in investing in the Bonds.

7. The undersigned acknowledges that the District and its officers, board members, advisors, employees and agents of either of the foregoing have not undertaken to furnish, nor has the undersigned requested, any information or to ascertain the accuracy or completeness of any information that may have been furnished by any other party.

8. This certificate and all rights and responsibilities described in it shall be governed by, and interpreted in accordance with, the laws of the State of Arizona. The federal and state courts of the State of Arizona shall have sole and exclusive jurisdiction over any dispute arising from the purchase and sale of the Bonds.

\_\_\_\_\_, as Purchaser

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_