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. _____

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 the 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.

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

Seller:

5 North 5th 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.

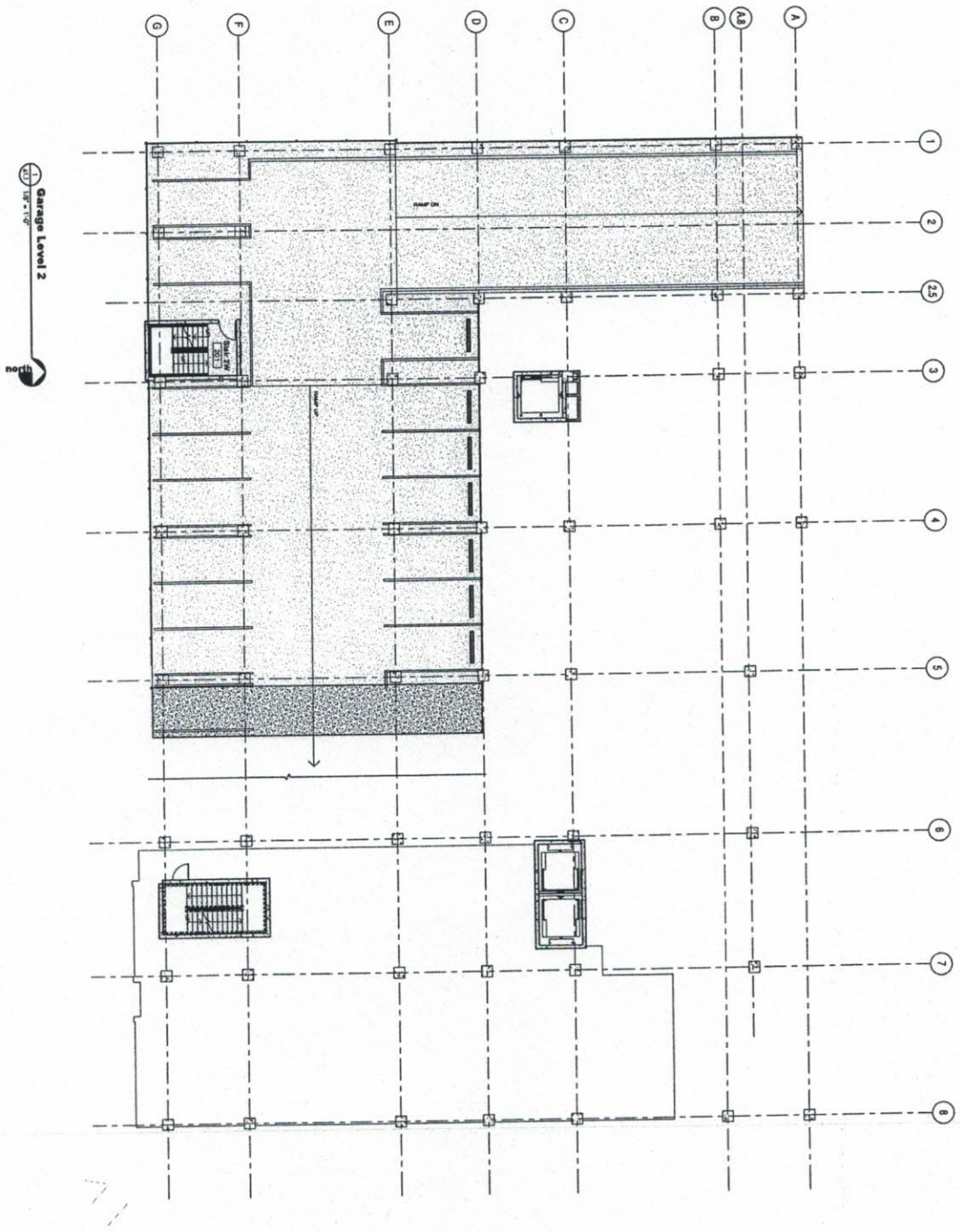
"Escrow Agent" First American Title Insurance Company

_____, 2014
Date of "Opening of Escrow"

By:_____
Its: Authorized Agent

EXHIBIT "A"
TO
SALE AGREEMENT AND
ESCROW INSTRUCTIONS

(Preliminary Plat)



a1.1

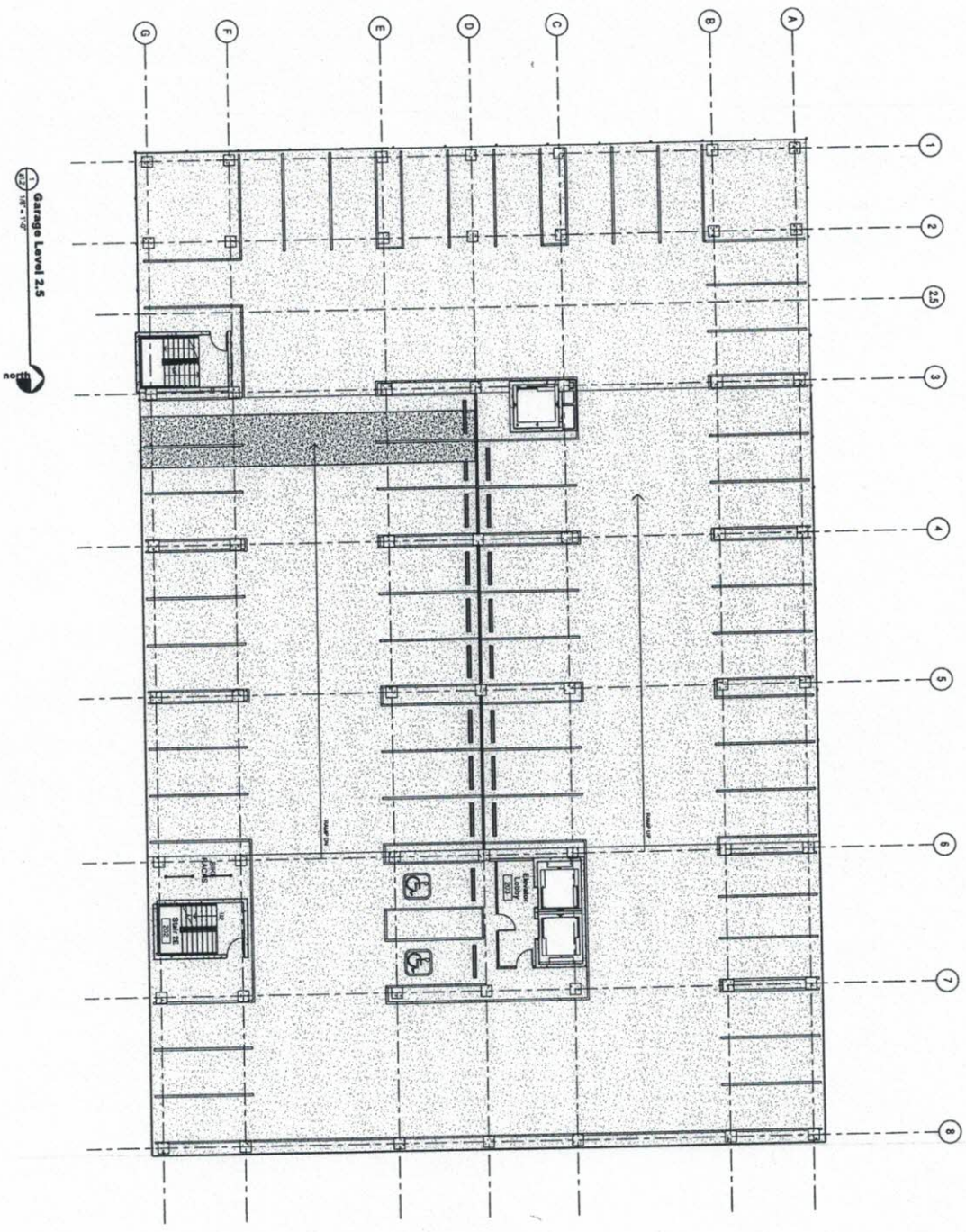
floor plan - 2nd floor

AC HOTELS BY MARRIOTT

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

Swaim job # 1317
FORS job # 1449
date 09.19.14
revisions

Swaim ASSOCIATES LTD ARCHITECTS AIA
FORS architecture + interiors
LLOYD



a1.2

floor plan - level 2.5

AC HOTELS MARRIOTT

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

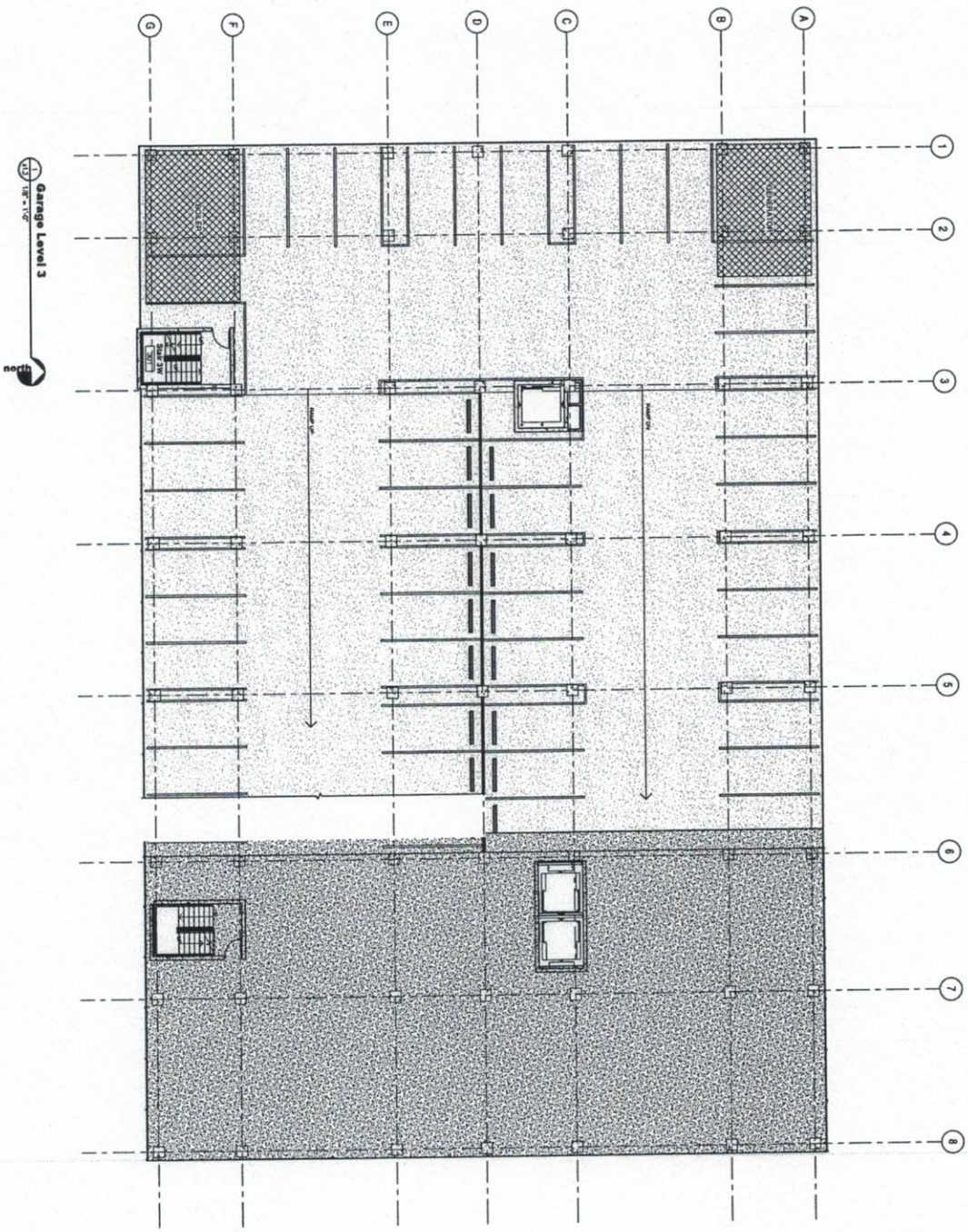
Swaim Associated Architects AIA

FORS architecture + interiors

LLOYD

PRELIMINARY

Swaim Job # 1317
FORS Job # 1449
date 09.19.14
revisions



a1.3

floor plan - 3rd floor

AC HOTELS MARRIOTT

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

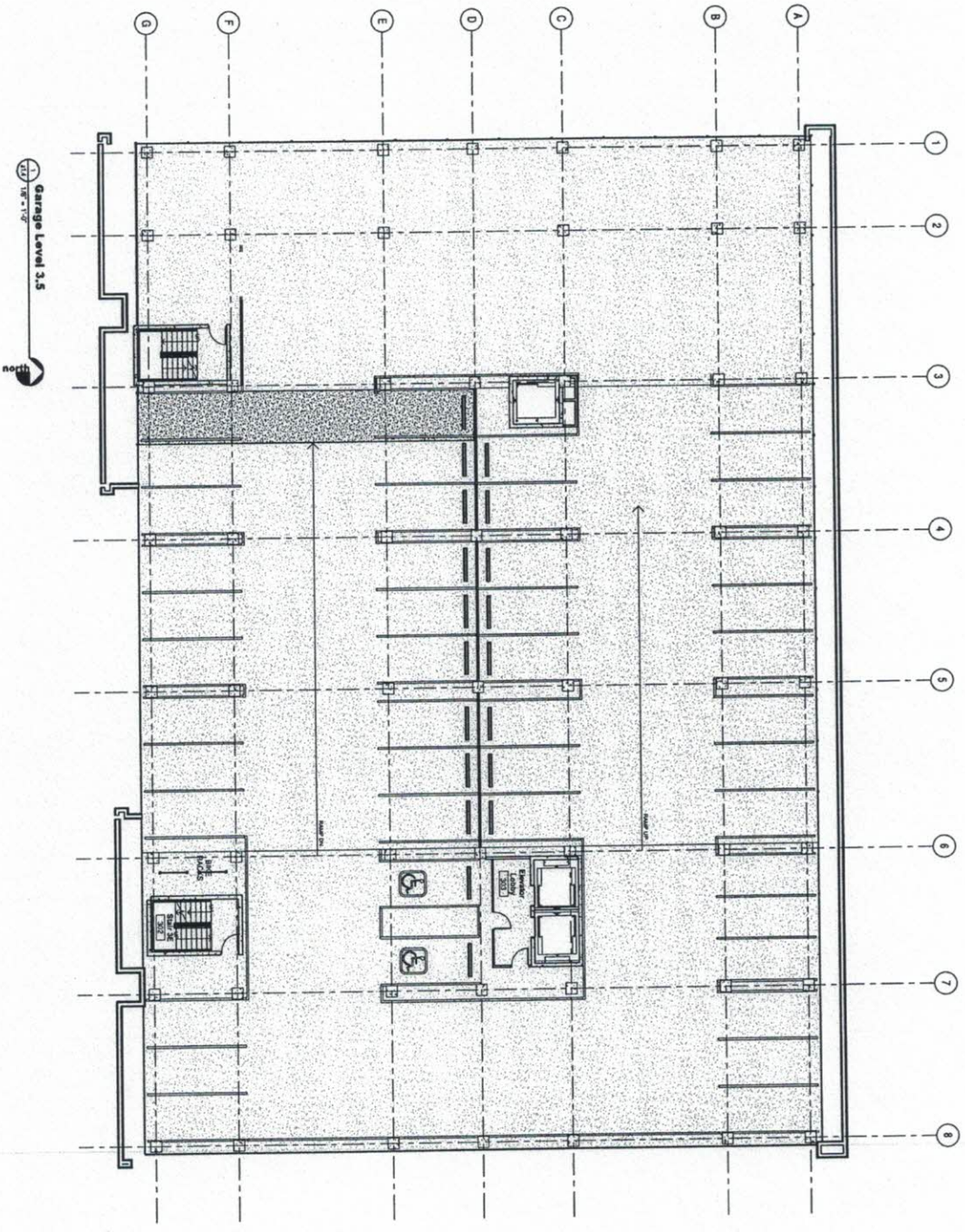
Swaim job #
1317
FORS job #
1449
date
09.19.14
revisions

PRELIMINARY

LLOYD

FORS architecture + interiors

swaim ASSOCIATES LTD ARCHITECTS AIA



a1.4

floor plan - level 3.5

AC HOTELS MARRIOTT

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

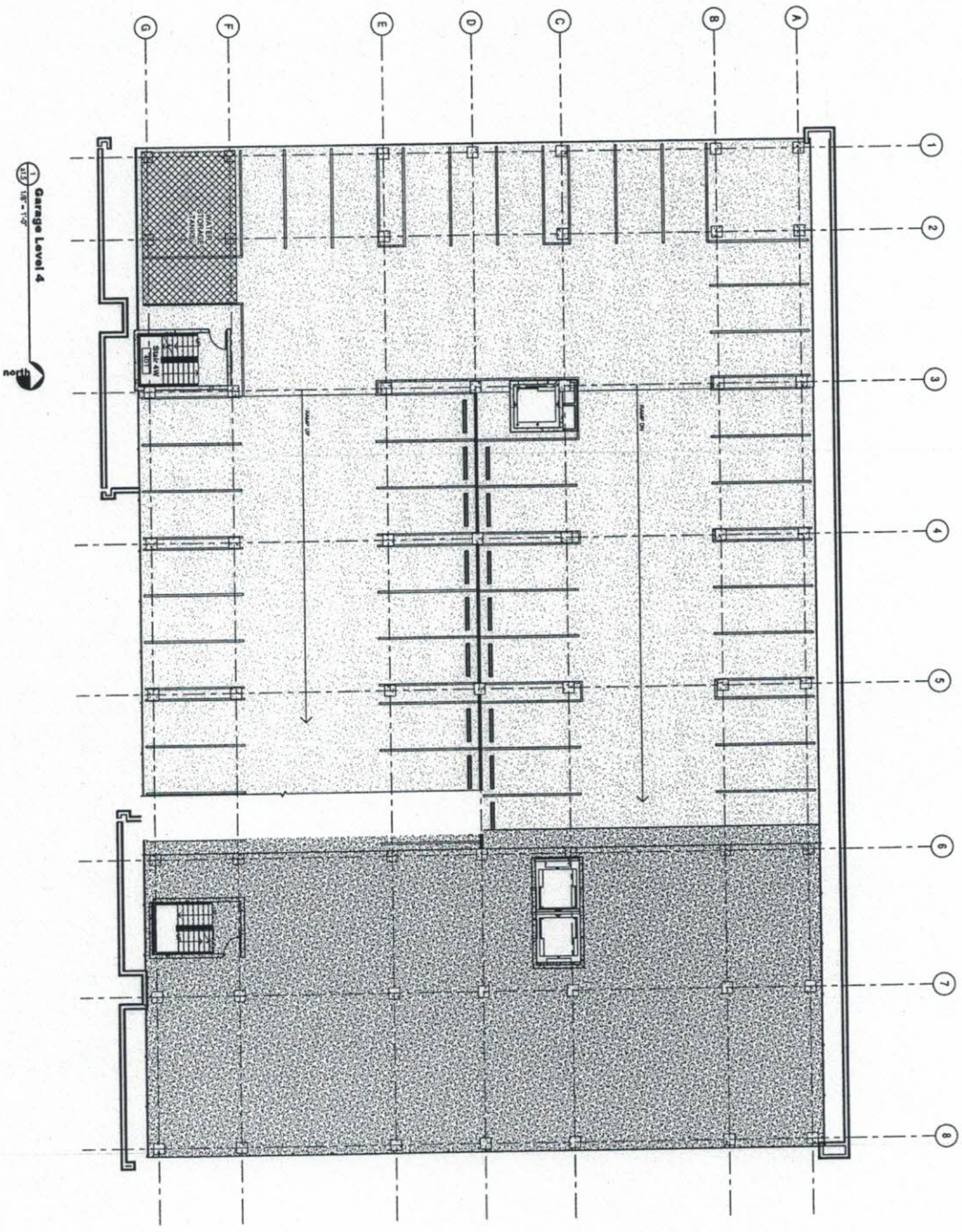
Swaim job #	1317
FORS job #	1449
date	09.19.14
revisions	

PRELIMINARY

LLOYD

FORS architecture interiors

swaim ASSOCIATES LTD ARCHITECTS AIA



a1.5

floor plan - 4th floor

AC HOTELS BY MARRIOTT

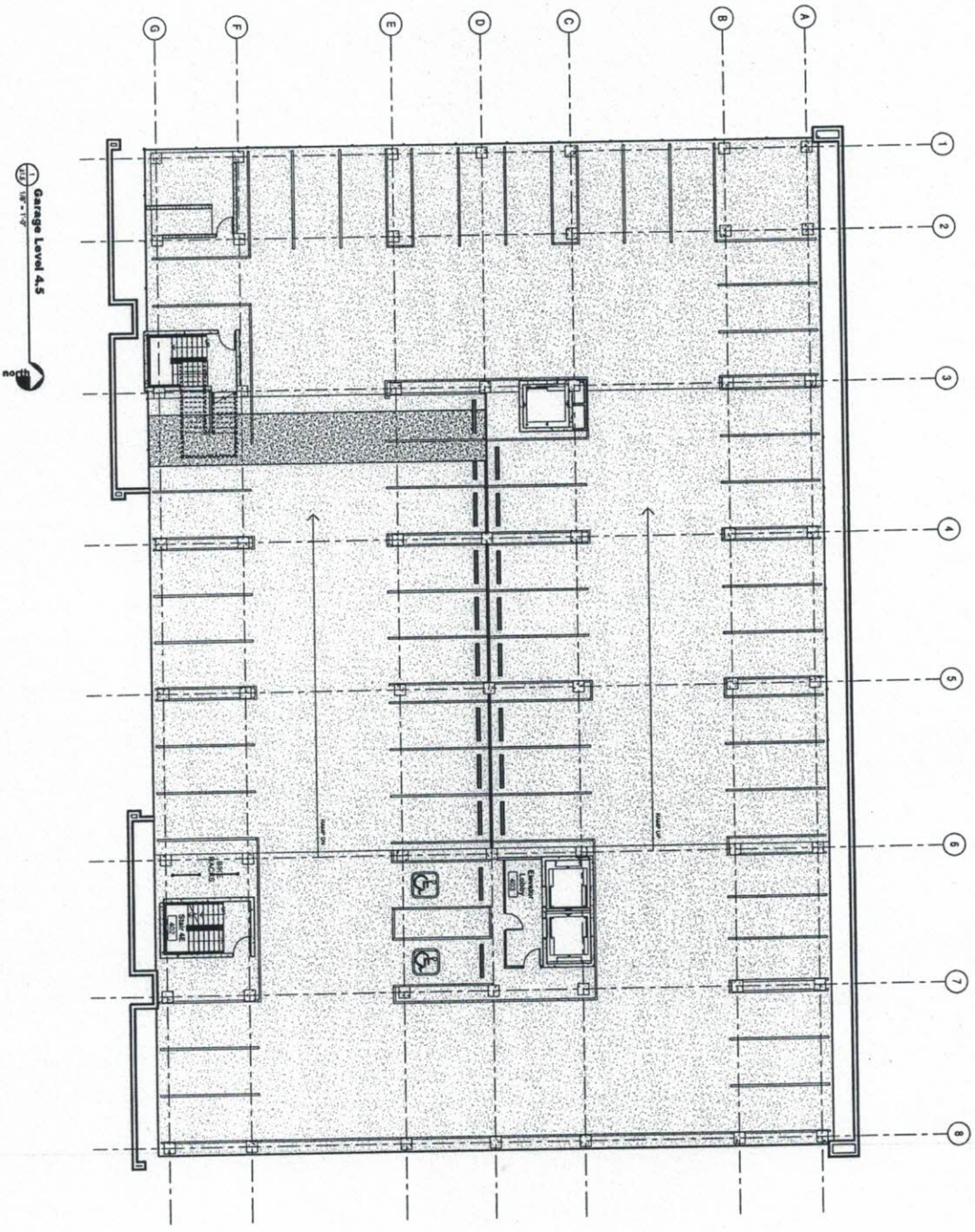
AC TUCSON
A Marriott Brand Hotel
151 East Broadway Blvd.
Tucson, Arizona 85701

swaim job # 1317
FORS job # 1449
date 09.19.14
revisions

swaim ASSOCIATES ARCHITECTS AIA

FORS architecture + interiors

LLOYD



a1.6

floor plan - level 4.5

AC HOTELS MARRIOTT

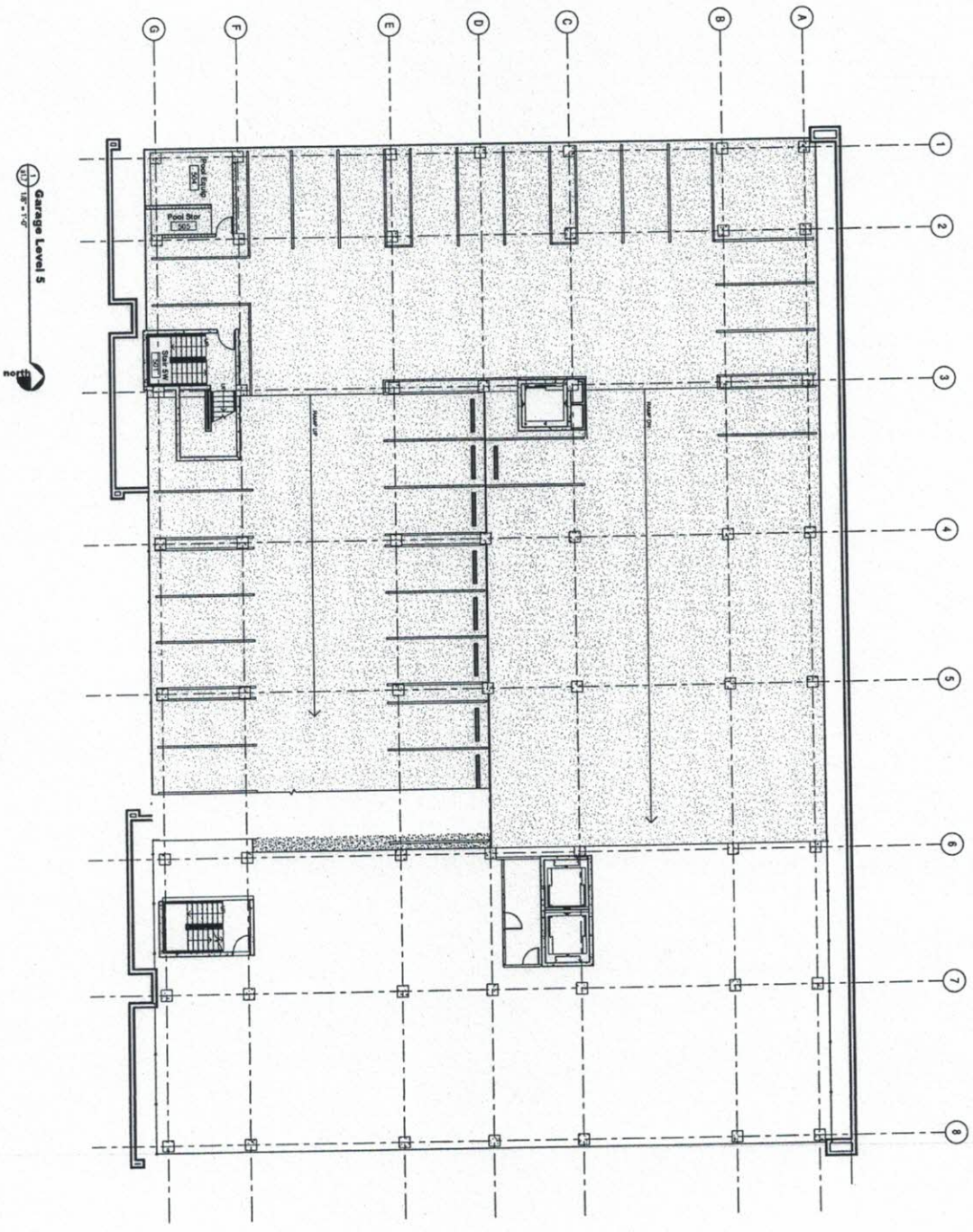
AC TUCSON
A Marriott Brand Hotel
151 East Broadway Blvd.
Tucson, Arizona 85701

Swaim job # 1317
FORS job # 1449
date 09.19.14
revisions

FORS architecture + interiors

LLOYD

swaim ASSOCIATES LTD ARCHITECTS AIA



a1.7

floor plan - 5th floor

AC HOTELS MARRIOTT

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

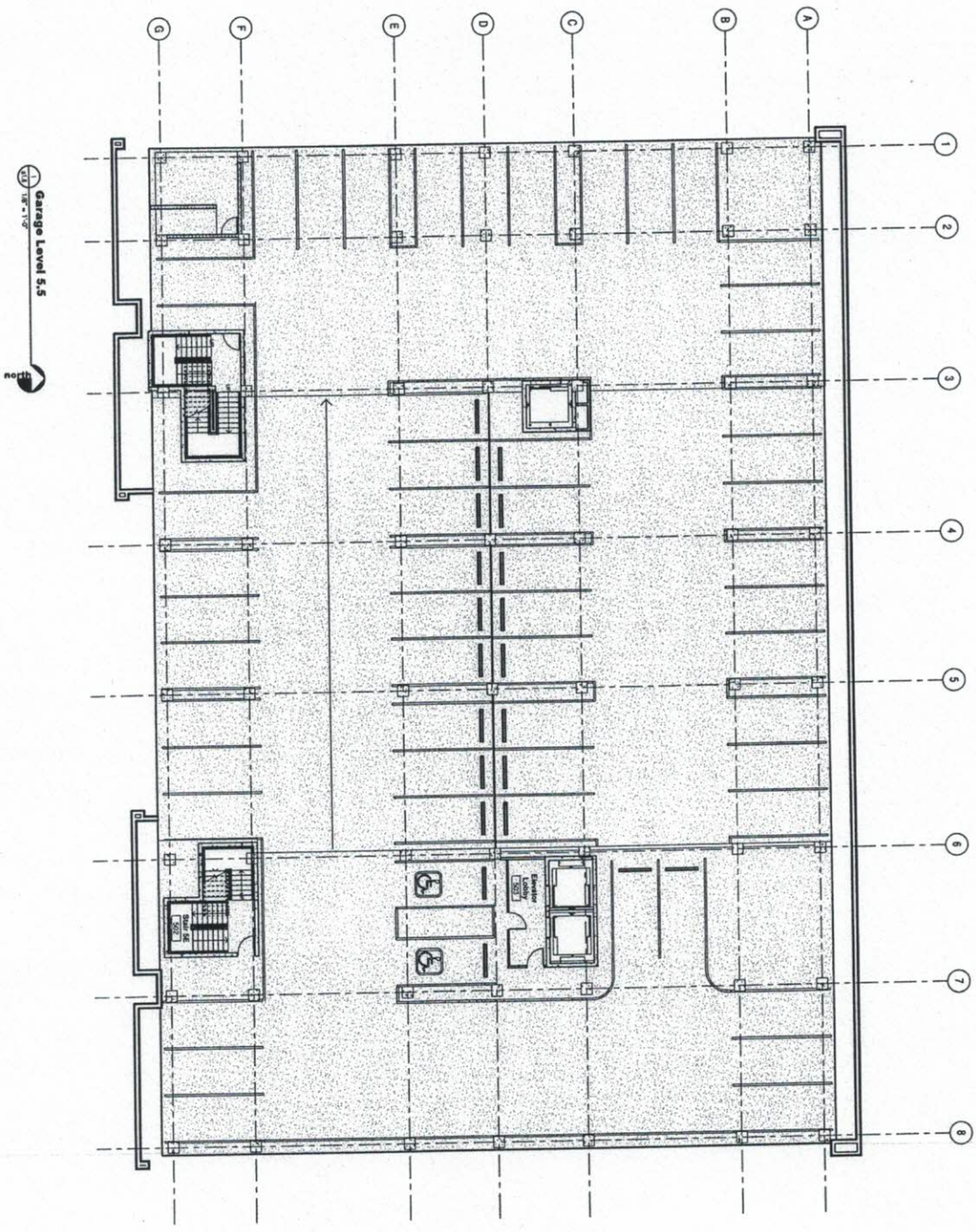
Swaim job # 1317
FORS job # 1449
date 09.19.14
revisions

PRELIMINARY

LLOYD

FORS architecture + interiors

swaim ASSOCIATES LTD ARCHITECTS AIA



a1.8

floor plan - level 5.5

AC HOTELS MARRIOTT

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

Swaim job # 1317
FORS job # 1449
date 09.19.14
revisions

PRELIMINARY

LLOYD

FORS architecture + interiors

swaim ASSOCIATES LTD ARCHITECTS AIA

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 5th 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 5th 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 5th 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 untenantable 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 untenantability 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 untenantable by reason of a casualty event, Tenant will be entitled to a proportionate reduction in the Minimum Rent during the period the Premises are untenantable. 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 of 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

By:_____
Its Secretary

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

TENANT:

5 NORTH 5TH HOTEL, LLC, an Arizona limited liability company

By:_____
Its manager

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

LESSEE

5 North 5th Hotel, LLC, an Arizona limited liability company

By: _____
Its manager

State of _____

County of _____

On this, the ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the said State, personally appeared _____, the Manager of 5 North 5th Hotel, LLC, an Arizona limited liability company, on behalf of the Company.

(Seal and Expiration Date)

_____
Notary Public

Exhibit A to Memorandum of Lease