







title of the Premises back to the District, such fee title shall be free and clear of all liens or encumbrances other than those set forth in the District's SWD as provided in Section 5 and the effective date of the GPLET Lease, nevertheless, should Developer elect to do so, it may encumber its leasehold interest in the Premises subject to the District's approval which shall not be unreasonably withheld.

d. Construction of the Hotel Project. Developer shall present all stages of the plans and specifications for the Hotel Project to the District for the District's (or its agent's) reasonable review, input and approval. The District shall be responsible for the cost of such review. Upon receipt of the building permits required for the construction of the Hotel, Developer shall construct the Hotel Project in substantial conformance with the plans and specifications approved by the City and the District, and shall, subject to force majeure events, obtain a Certificate of Occupancy no later than three years from the Effective Date. During construction of the Hotel Project, if required by the lender, Developer shall employ a third-party inspector, at Developer's sole cost and expense, for the benefit of such lender and the District, whose role shall be to confirm that the Hotel Project is constructed in substantial conformance with the approved plans and specifications.

e. Parking. The District shall make at least 75 parking spaces adjacent to the Premises available for the Hotel Project at no cost to Developer for a period of five years from the issuance of the Hotel Project C of O.

f. Successor or Assigns. Developer shall have the sole discretion and ability to transfer all rights and responsibilities associated with this Agreement to any entity for which Caliber Services, LLC is at least a 50% owner. If any transfer of rights and/or responsibilities occurs pursuant to the first sentence of this paragraph, Developer shall notify the District within thirty (30) days prior to the transfer being effectuated. Any other transfer of rights and/or responsibilities to successor interests or assigns of Developer shall be subject to the prior written approval of the District, which shall not be unreasonably withheld.

8. Obligations of the District. The District shall have the obligation to complete the following during the timelines set forth herein:

a. Satisfaction of Contingencies. The District will use its good faith efforts to work with the City and the District's bondholders to satisfy the contingencies set forth in Section 3 above within 90 days from the Effective Date.

b. Marketing. The District shall assist in coordinating (i) a cooperative agreement between the City and the TCC management to ensure that the Hotel Project is integrated into the marketing and sales for the TCC, and (ii) an agreement between Developer and the TCC Management to allow Developer to access the TCC for coordinated reservations and bookings.

c. City Negotiations. The District shall assist, to the extent permitted by law, in negotiations with the City to obtain relief from the City's permits fees and construction sales taxes for the Hotel Project.

d. Excise Tax Abatement. Developer will not seek an abatement of the excise tax due under the GPLET Lease. .

e. Payment of a Portion of Developer's Initial Investment. The District recognizes that Developer is investing initial capital (the "Initial Investment") to confirm its belief that the Hotel Project is feasible. Developer shall provide the District with monthly updates of the amount expended on the Initial Investment. If the City and/or bondholder(s) withhold approval for the Hotel Project, the District shall be responsible for up to fifty percent (50%) of the first \$250,000.00 of the Initial Investment from the Effective Date of this Agreement. The District's responsibility to reimburse Developer's Initial Investment would then be capped at \$125,000, or 50% of the first \$250,000.

9. TPT Tax Rebates. To the extent permitted by law, the District hereby agrees to rebate the TPT Funds it actually receives from the State of Arizona on sales taxes generated from the Hotel Project as well as of the incremental increase in TPT Funds generated from activities in the TCC that are due to the existence of the Hotel Project ("TCC Incremental Increase"). The TCC Incremental Increase will be determined by averaging the TPT Funds received by the District that have been directly attributable to the TCC over the thirty-six months prior to the Effective Date and subtracting that amount from the TPT Funds attributable to the TCC and received by the District during the Term of this Agreement (defined below).

a. On the Effective Date, the District shall establish a "Sinking Fund" into which shall be deposited 100% of (i) the gross sales tax proceeds from the Hotel Project, and (ii) the TCC Incremental Increase (collectively, the "Rebates") actually received by the District from the Arizona Department of Revenue ("ADOR") during the Term of this Agreement as a direct result of payments actually made from the operations of the Hotel Project and the TCC, respectively, to the ADOR.

b. To allow the District to track these amounts and provide Developer with the benefit of the Rebates, Developer and all vendors, tenants or the like within the Hotel Project shall provide the District with their respective eight digit "TPT License Number" and the business name associated with that TPT License Number.

c. The Rebates shall be held in a separate FDIC insured account established by the District solely for the purpose described in this Section 9 and shall not be commingled with any other funds or monies of the District. Until paid to the Developer as provided in this Section, the Rebates shall belong to the District. Neither the Developer nor the bank holding the Sinking Fund shall have any interest therein, except that Developer shall have a contractual right to receive

payments pursuant to Section 9(e) below after Developer and District have executed the GPLET Lease and District holds fee title to the Premises.

d. Commencing on the third full month after the Effective Date and continuing quarterly thereafter during the Term of this Agreement, the District shall provide the Developer with a summary of the Rebates received by the District from the ADOR during the preceding three months (“Quarterly Summary”).

e. Provided that Developer is not then in breach of any covenant herein or in the GPLET Lease, commencing on the first business day of each quarter (every three months) after receipt of the Hotel Project C of O, the District shall pay to Developer one hundred percent (100%) of all of the Rebates from the Sinking Fund. The District acknowledges its commitment of a minimum payment of \$2.5 million to be paid to Developer (the “Minimum Payment”). The Minimum Payment may be satisfied through the Rebates. If the Rebates do not equal the Minimum Payment at the expiration of the Term of this Agreement, then the District shall pay the difference between Rebate payments already distributed to Developer and the Minimum Payment within thirty (30) days of the expiration of the Term of this Agreement as defined in this paragraph. The Rebates up to and including the Minimum Payment shall be paid into an account in Developer’s name established with the bank of the Developer’s choice. The Sinking Fund shall be the sole source of payments of the Rebates.

f. The “Term of this Agreement” shall be the earlier of: (i) full and timely payment of Rebates (up to and including the Minimum Payment); (ii) July 1, 2025, which is the termination of the distribution of revenues to the District pursuant to Arizona Revised Statutes §42-5031; or (iii) the date the ownership of the Premises is conveyed to a private party in contravention of A.R.S. §48-4204(B). Upon the expiration of the Term of this Agreement and the payment of at least the Minimum Payment to Developer, the Sinking Fund shall terminate with any remaining balance shall be paid to the District’s general operating fund and this Agreement (but not the GPLET Lease) shall terminate and the parties shall have no continuing obligation unto the other hereunder.

10. Right of First Refusal. Developer and the District have an interest in a potential second phase hotel as well as the investment in and reinvigoration of the Eckbo Fountains, the amphitheater plaza and other elements of the TCC. Subject to other contractual obligations of the District existing as of the Effective Date, all applicable laws and additional consideration provided by Developer, Developer shall therefore have a right of first refusal, for five years from the Effective Date hereof, to develop and construct any future phase within the TCC area that includes a second hotel, investment in and reinvigoration of the Eckbo Fountains and/or amphitheater plaza.


**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

**Caliber Hospitality, LLC**, an Arizona limited liability company, by

Caliber Services, LLC, an Arizona limited liability company, Manager, by

Caliber Companies, LLC, an Arizona limited liability company, Manager

By  \_\_\_\_\_  
**John C. Loeffler, Manager**

**“Rio Nuevo”**

**Rio Nuevo Multipurpose Facilities District**,  
a tax levying public improvement district

By \_\_\_\_\_  
Fletcher McCusker  
Chairman of the Board

By \_\_\_\_\_  
Mark Irvin  
Secretary of the Board

EXHIBIT A  
Approximate Location of Premises

