

**RIO NUEVO DISTRICT – CALIBER SERVICES, LLC  
DEVELOPMENT AGREEMENT**

For reference, this Development Agreement (“Agreement”) is dated June 2, 2017 (the “Effective Date”). The parties to this Agreement are **Caliber Hospitality, LLC**, an Arizona limited liability company (“Developer”) and **Rio Nuevo Multipurpose Facilities District**, a tax levying public improvement district (the “District”).

**RECITALS**

A. The District is a special taxing district of the State of Arizona (the “State”) that was formed by the City of Tucson, Arizona (the “City”) and the City of South Tucson, Arizona under the Stadium District Statutes that commence at A.R.S. §48-4201 *et seq.* A “District” formed under these statutes is defined as “... any county stadium district established pursuant to § 48-4202, subsection A, B or C.” §48-4201(3). The voters who authorized formation of the District authorized the District to receive an incremental portion of State-shared funds derived from transaction privilege taxes (i.e. sales tax called “TPT Funds”) collected from within the District’s boundaries all of which lie within the City.

B. Developer intends to build a limited service, 125-room or greater, branded, convention center hotel (the “Hotel”) in the area of the Tucson Convention Center (the “TCC”) as more particularly defined in Section 2 below (the “Premises”) along with a restaurant /bar and an associated coffee shop that could be separate from or connected to the Hotel (the “Hotel Project”). The Hotel Project will also include features to be coordinated for use with TCC management to enhance the overall TCC experience.

C. The District desires that Developer cause the Hotel Project to be constructed and developed on the Premises to further the District’s purposes of enhancing Downtown Tucson and the District’s Primary Component (as defined in A.R.S. § 48-4201(4)(B)), the TCC. The Hotel Project on the Premises (as defined in Section 2 below) will: (i) provide a significant investment within the District; (ii) create new opportunities for employment in the District; (iii) provide lodging to support programs and events at the TCC; (iv) enhance retail transaction (sales) tax collections in the District; (v) provide greater ability for the District to promote new development within the District boundaries. The value of constructing and operating the Hotel Project on the Premises will be analyzed through an economic and fiscal impact analysis to be ordered by the District and paid for by the Developer (the “Economic Analysis”). The District has determined that the Hotel Project would not be constructed in the absence of this Agreement. Accordingly, the Board has determined that it is in the best interests of the public to rebate a portion of the TPT Funds generated and collected from Developer’s retail sales from the Hotel Project, upon terms more specifically set forth below, as an incentive for Developer to construct the Hotel Project on the Premises at Developer’s expense.

D. The purpose of this Agreement is to set forth each party’s benefits and obligations pertaining to the construction and operation of the Hotel Project. This Agreement shall be binding upon its execution by authorized representatives of the District and Developer.

## **AGREEMENT**

1. **Incorporation and Representation.** The foregoing Recitals are hereby incorporated into this Agreement by this reference as if set forth in full, and each of the parties represents that such Recitals are true and accurate to the best of each signatory's knowledge, information and belief.

2. **The Premises.** The approximate location of the Hotel Project (the "Premises") is shown on Exhibit A attached hereto. The exact location of the Premises will be determined pursuant to an ALTA/NSPS Survey the ("Survey") to be obtained by Developer within three months from the Effective Date of this Agreement. The Survey will be certified to the Developer, the District, the City and the title company chosen by the parties. It is the intention of the parties that the Hotel Project only minimally displace (if at all) any existing parking at the TCC.

3. **Contingencies.** This Agreement and the Hotel Project will be contingent upon: (i) the City approving the termination of its sublease with the District for the Premises upon terms acceptable to the District; (ii) the District's bondholder's approval upon terms acceptable to the District; (iii) the City working with the District and Developer to approve appropriate zoning for the Hotel Project; and (iv) Developer and the District agreeing to a mutually satisfactory form of GPLET Lease (defined in Section 5 below).

4. **Hotel Brand Selection.** The size and brand of the Hotel shall be determined by Developer in Developer's sole and absolute discretion. Developer shall utilize hospitality demand studies completed by Developer in that process.

5. **Ownership and Lease of Premises.**

a. **Deed to Developer.** Prior to commencement of construction of the Hotel Project, and subject to satisfaction of the contingencies set forth in Section 3 above, the District shall convey the Premises to Developer by Special Warranty Deed ("District's SWD") that will include a "Reversionary Interest" in the Premises to be held by the District. A Reversionary Interest shall mean that the District's SWD will entitle the District to reacquire fee title to the Premises if within 36 months from the Effective Date, the Hotel Project has not made substantial progress in vertical construction of the Hotel and if the parties have not agreed upon the terms of the GPLET Lease as provided in Subsection 5(c) below.

b. **Deed to District.** Upon receipt of the Certificate of Occupancy ("C of O") for the Hotel Project, but prior to opening for business, Developer will convey the Premises back to the District by Special Warranty Deed ("Developer's SWD"). Developer's SWD shall not include a reversionary interest and shall be subject only to the matters or record reflected in the District's SWD.

c. GPLET Lease. Within six months from the Effective Date, the parties will enter into a Triple Net Government Premises Lease Excise Tax (the “GPLET Lease”) for a term of 25 years from the date specified in the GPLET Lease, or such other term as allowed by statute. Because of the governmental nature of the District, certain aspects of the GPLET Lease and this Agreement will be governed by A.R.S. §42-6201 et seq. and A.R.S. §48-4201 et seq. Pursuant to the GPLET Lease, Developer will be responsible to operate and manage the Hotel Project and to pay all expenses relating to the same. The GPLET Lease will contain an option to purchase in favor of Developer at the Purchase Price of \$1,000 at the end of the GPLET Lease. In the event of early termination of the lease by Developer, the purchase price will be determined by Section 6 below.

6. Value of the Premises. Within two months after the Survey is completed, but no later than one month before the start of construction, the District shall have the Premises appraised by an MAI Certified Appraiser in its “As-Is” condition on a square foot basis. The appraised value of the Premises, plus interest at the rate of 3% per annum, amortized over the term of the GPLET Lease, shall be the “Purchase Price” when and if the Developer exercises its option to purchase the Premises prior to the expiration of the GPLET Lease.

7. Obligations of Developer. Developer shall have the obligation to complete the following during the timelines set forth herein:

a. Governmental Approvals and Construction Contracts. Developer shall obtain all necessary governmental approvals to construct the Hotel Project, including but not limited to any zoning interpretations or rezoning the Premises if necessary, obtaining design approval of the Hotel Project, and obtaining all necessary permits for the construction of the Hotel Project within twenty-four months from the Effective Date. Developer shall also be responsible to obtain bids for the design and construction of the Hotel Project and shall enter into all necessary contracts for the same within one year from the Effective Date.

b. Due Diligence. Developer shall obtain an extended coverage commitment for title insurance in a form reasonably satisfactory to Developer and the District insuring each party’s respective interests, as such interests may change from time to time. The Survey shall be updated to comply with the requirements of the title company. Developer shall also obtain a Phase I Environmental Assessment (and a Phase II if deemed necessary by the Phase I) certified to the District and to Developer in a form satisfactory to the District. Finally, Developer shall obtain any other studies or due diligence required by the City or reasonably requested by the District. All due diligence must be completed prior to Developer finalizing any construction financing.

c. Financing of the Hotel Project. Developer will obtain both construction and permanent financing for the Hotel Project, without pledging or otherwise relying upon any of the TPT Rebates to be received from the District pursuant to Section 9 below as a revenue stream for repayment of such financing. During the construction period, the financing may be secured by the Developer’s fee interest in the Premises. However, upon the Developer’s conveyance of fee

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

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EXHIBIT A  
Approximate Location of Premises

