

**TRIPLE NET  
GOVERNMENT  
PROPERTY LEASE EXCISE TAX**

**BY AND BETWEEN**

**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,**  
an Arizona tax levying special facilities district

**“LANDLORD”**

**AND**

**BP CITY PARK INVESTORS, LLC,**  
an Arizona limited liability company

**“TENANT”**

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**TRIPLE NET  
GOVERNMENT  
PROPERTY LEASE EXCISE TAX**

THIS LEASE ("Lease") is entered into as of the 9<sup>th</sup> day of March, 2017 (the "Effective Date"), by and between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district, having its office at 400 West Congress, Suite 152, Tucson, AZ 85701 (hereinafter "Landlord"), and **BP CITY PARK INVESTORS, LLC**, an Arizona limited liability company, having its office at 20 East Congress, Tucson, AZ 85701 (hereinafter "Tenant"). Capitalized terms used in this Lease shall have the meanings ascribed to them parenthetically or in Article 2 of this Lease.

**RECITALS:**

**A.** Landlord 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 pursuant to Arizona Revised Statutes ("A.R.S.") §48-4201 *et seq.*

**B.** Landlord will own the real property more particularly described in Exhibit A attached hereto (the "Land") upon which the "New Building" will be located. The Land and the New Building constitute the "Premises." After acquisition of the Land from Tenant and construction of the New Building by Tenant, the Premises will be "Government Property Improvements" under A.R.S. §42-6201(2), under which Landlord is a "Government Lessor" pursuant to A.R.S. §42-6201(1), and Tenant is a "Prime Lessee" pursuant to A.R.S. §42-6201(4).

**C.** The Premises are located within the special taxing district limits of Landlord and in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 *et seq.*) (the "CBD"). More than one year has lapsed from the City's designation of the CBD, and Landlord has determined (based on an estimate of an independent third party) that (i) Tenant's construction and renovation of, and improvements to, the Premises will result in an increase in property value of at least one hundred percent, and (ii) within the term of this Lease, the economic and fiscal benefit to the State and the Landlord will exceed the benefits received by Tenant under the Lease.

**D.** The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6202 (A) and (B) (the "GPLET"). The City has consented to the abatement of the GPLET pursuant to Resolution No. 22697 (the "Consent"), beginning March 9, 2017, being the anticipated date of the issuance of the Certificate of Occupancy for the Premises (the "Commencement Date"), and ending eight (8) years thereafter, all as provided in A.R.S. §42-6206(C) (the "Abatement Period").

Portions of the New Building may be eligible for an exemption from the excise tax after the eight year Abatement Period pursuant to A.R.S. §42-6208.

E. The Premises and this Lease are subordinate and subject to the terms of (i) that certain Promissory Note and Construction Deed of Trust and Fixture Filing (With Assignment of Rents and Security Agreement), in which Tenant is the Trustor and Bank of Tucson ("BOT") is the Beneficiary (the "BOT Note" and "Construction Deed of Trust," respectively), securing a construction and permanent loan in the maximum principal amount not to exceed \$11,000,000.00, and (ii) that certain Promissory Note and Second Deed of Trust and Fixture Filing (With Assignment of Rents and Security Agreement), in which Tenant is the Trustor and Landlord is the Beneficiary (the "RN Note" and "Subordinated Deed of Trust," respectively). The BOT Note, together with the RN Note are sometimes hereafter collectively referred to as the "Note." The Construction Deed of Trust, together with the Subordinated Deed of Trust are sometimes hereafter collectively referred to as the "Deeds of Trust" and other documents executed in connection therewith with respect to the Premises where the proceeds are being used by Tenant to finance construction of the Premises. BOT, as the Beneficiary under the Construction Deed of Trust, and Landlord, as the Beneficiary under the Subordinated Deed of Trust, together with any applicable successor beneficiary under either of the Deeds of Trust, are each referred to as a "Beneficiary" and collectively the "Beneficiaries." It is acknowledged and agreed that the rights of and as between each party Beneficiary under the Deeds of Trust shall be as set forth and controlled by that certain Intercreditor Agreement entered into by and among BOT as primary lender, Landlord as subordinated lender, and Tenant as Borrower (the "Intercreditor Agreement").

## ARTICLE 1 LEASE OF THE PREMISES

§ 1.1. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained herein, the surface, subsurface and air rights on, under, above and appurtenant to presently existing or the to-be-constructed New Building on the Land. The Premises are subject to, and further described by, the following:

A. Other covenants, restrictions, easements, agreements, and reservations of record, if any.

B. Present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of the municipality in which the Land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Land.

C. The condition and state of repair of the Premises as the same may be on the Commencement Date.

**§ 1.2. Term.** Although this Lease, and the obligations of Landlord and Tenant as set forth in this Lease shall commence on the Effective Date, the Rental Period shall commence ("Commencement Date") on the issuance of a certificate of occupancy (whether temporary or permanent) ("Certificate of Occupancy") with respect to the New Building as required by the City and shall expire at 12:00 midnight on the last day of the Rental Period ("Termination Date"), unless this Lease is sooner terminated as hereinafter provided, with "Lease Term" being from and after the Effective Date until the Lease expires or is sooner terminated.

**§ 1.3. Tenant's Termination Right.** Notwithstanding any provision of this Lease to the contrary, but subject to the provisions of Section 16.7, Tenant may terminate this Lease at any time upon not less than sixty (60) days' written notice to Landlord.

**§ 1.4. Deeds of Trust Encumbering Premises.**

A. Tenant is hereby given the absolute right without the Landlord's consent to refinance the BOT Note in an amount not to exceed \$11,000,000 and to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust or collateral assignment or otherwise subject to the provisions of the Intercreditor Agreement. The Parties acknowledge and agree that as long as the Landlord holds fee title to the Premises, the Deeds of Trust shall be converted to encumber only the Tenant's leasehold interest in the Premises (instead of fee title), but that upon the expiration or termination of this Lease and reversion of fee title to the Premises to Tenant, the Deeds of Trust will again encumber fee title to the Premises. All protections and notices required by this Lease to be given to Tenant shall be extended and given to any secured lender, including, without limitation, the Beneficiaries under the Deeds of Trust. At such time, if any, that the Construction Deed of Trust has been satisfied and released of record, and if Tenant elects to enter into new secured financing, any such security interest shall be referred to herein and included in the "Deed of Trust" definition and the beneficiary under such Deed of Trust shall be referred to herein and included in the "Beneficiary" definition.

B. No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any secured lender, unless such secured lender forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said secured lender.

**§ 1.5. Title to New Building.** Upon issuance of a Certificate of Occupancy with respect to the New Building, title to the New Building shall automatically vest in Landlord without the requirement of any deed, conveyance, or bill of sale thereon, subject, however, to Section 28.13 and the respective rights of Tenant and Beneficiaries under this Lease. However, if Landlord or Tenant should reasonably require any such

documents or instruments in confirmation thereof, Tenant and Landlord shall execute, acknowledge, and deliver the same.

## **ARTICLE 2 DEFINITIONS**

For the purposes of this Lease, the following words shall have the definition and meaning hereafter set forth.

“Affiliate”: As applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) “person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

“Abatement Period”: As defined in Recital D.

“Additional Payments”: As defined in § 4.1.

“Applicable Laws”: The federal, state, county and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the Premises.

“Certificate of Occupancy”: As defined in § 1.2.

“Commencement Date”: As defined in § 1.2.

“Completion Date”: The date upon which the construction of the New Building is completed, as evidenced by the issuance of a Certificate of Occupancy.

“Enforced Delays”: As defined in § 25.1.

“Event of Default”: As defined in § 16.1.

“Impositions”: As defined in § 4.1.

“Land”: As defined in Recital B and described on Exhibit A.

“Landlord”: The Landlord named herein and its successors and assigns.



"Monetary Default": As defined in § 17.1 (A).

"Net Rent": As defined in § 3.1 (A).

"New Building": Any and all structures or improvements to be constructed on the Land pursuant to this Lease.

"Premises": As defined in Recital B.

"Rental Period": The period beginning on the Commencement Date and, unless earlier terminated pursuant to the terms of this Lease, ending 25 years from the first day of the month following the date of issuance of the Certificate of Occupancy.

"Second Notice": As defined in § 16.2.

"Tenant": The Tenant named herein and its successors and assigns.

### **ARTICLE 3 RENT**

**§ 3.1. Net Rent.** On or before ten (10) days after the Effective Date, Tenant agrees to make a lump sum rent payment of \$1,000 as the rental for the Premises from the Effective Date until the Commencement Date ("Initial Rent"). On the Commencement Date and every year anniversary thereafter during the Rental Period, Tenant shall pay to Landlord net annual rental ("Net Rent") as set forth in the Net Rent Schedule attached hereto as Exhibit B.

**§ 3.2. Rent Absolutely Net.** It is the purpose and intent of the Landlord and Tenant that Initial Rent and Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Initial Rent and Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, except as hereinafter otherwise specifically provided in this Lease. Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth. All costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the Lease Term shall be paid by Tenant. Landlord shall be indemnified and saved harmless by Tenant from and against all of the foregoing costs, expenses, and obligations.

**§ 3.3. No Release of Obligations.** Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Lease Term

(including, without limitation, Tenant's failure, refusal, or inability for any reason to occupy the New Building) shall relieve the Tenant of its liability to pay the Initial Rent and Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease, except as provided herein.

#### **ARTICLE 4 ADDITIONAL PAYMENTS**

**§ 4.1. "Additional Payments" Defined.** Tenant shall pay all Additional Payments during the Lease Term, without notice (except as specifically provided) and without abatement, deduction or setoff (except as provided in Section 4.3), before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof. "Additional Payments" include all sums, impositions, costs, expenses and other payments (excluding, however, debt payments due to a secured lender), and all taxes, including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax, assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, insurance, any association dues, pest control, water, sewer, utilities, janitorial, landscaping and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever which, at any time during the Rental Period may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as an "Imposition") provided, however, that:

**A.** if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Lease Term before any fine, penalty, further interest or cost may be added thereto; and

**B.** any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in paragraph (A) of this Section 4.1) relating to a fiscal period of the taxing authority, a part of which period is included within the Rental Period and a part of which is included in the period of time after the expiration of the Rental Period shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Rental Period) be adjusted between Landlord and Tenant as of the expiration of the Rental Period, so that Tenant shall pay that portion of such Imposition attributable to the Rental Period and Landlord shall pay the remainder thereof.

**§ 4.2. Rental Tax Payments.** Tenant shall pay to Landlord, with and in addition to Initial Rent and Net Rent, all taxes imposed by any governmental unit on the Initial Rent and Net Rent received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other Impositions directly to the taxing authority or authorities.

**§ 4.3. Contest.** Tenant, if it shall so desire, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord an amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord and Tenant), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon.

**§ 4.4. Assessment Reduction.** Tenant may, if it shall so desire, without expense to Landlord, endeavor at any time to obtain a lowering of an Imposition or assessment upon the Premises for the purpose of reducing the amount thereof. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant.

**§ 4.5. Hold Harmless.** Landlord shall not be required to join in any action or proceeding referred to in Sections 4.3 or 4.4 (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed). Tenant hereby agrees to save Landlord harmless from all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

**§ 4.6. Government Property Lease Excise Tax.** As required under A.R.S. §42-6206, Tenant is hereby notified of its potential tax liability under the GPLET provisions of A.R.S. §42-6201, *et seq.* Failure of Tenant to pay the tax after notice and an opportunity to cure is an Event of Default that could result in termination of this Lease. Pursuant to the City's authority, the City has or will abate Tenant's obligation for the GPLET pursuant to A.R.S. §42-6209 for the period commencing on the Commencement Date. Landlord agrees to take reasonable additional action as necessary for Tenant to qualify for GPLET tax treatment so that (i) the Abatement Period will run as to the New Building (or a legally divisible real property interest in the New Building) constructed under this Lease for a period of eight (8) years from the date of the issuance of the Certificate of Occupancy by the City as to the New Building and (ii) the New Building will be taxed as Government Property Improvements in accordance with A.R.S. §42-6201

*et seq.* from the expiration of the Abatement Period through the end of the Rental Period, subject to Section 4.7 below. Pursuant to the Consent (Resolution No. 22697) the City has agreed to abate the GPLET.

**§ 4.7. Exemption.** Tenant acknowledges that after the expiration of the Abatement Period it is required to pay the GPLET on the Premises, as such will be determined by A.R.S. § 42-6201 through § 42-6209, as now or hereafter amended, and pursuant to rates issued by the Arizona Department of Revenue in accordance therewith. If Tenant asserts an exemption from the GPLET pursuant to A.R.S. § 42-6208, Tenant shall submit the appropriate application for exemption to the Pima County Assessor. Landlord agrees to take reasonable additional action reasonably requested by Tenant which Tenant deems to be reasonably necessary for the Premises or portion thereof to qualify for GPLET exemption for the remainder of the Rental Period; provided that Landlord makes no representation whether any portion of the Premises will qualify for an exemption. Notwithstanding the foregoing, Tenant shall comply with all requirements applicable to a Prime Lessee under the GPLET provisions including, without limitation, those provided in A.R.S. § 42-6204(B). Additionally, Tenant shall not change the use of the Premises, without an amendment to this Lease. Should it be determined by the Pima County Assessor, the Arizona Department of Revenue, any court of competent jurisdiction or any appropriate governing body that the exemption claimed is not applicable, Tenant shall be responsible to pay the GPLET on the Premises, and any additional fines, late fees or interest, whether assessed against Landlord or Tenant (to the extent due) as part of the "Additional Payments" pursuant to Article 4.1 above.

## **ARTICLE 5 INSURANCE**

**§ 5.1. Tenant Obligation to Insure.** Tenant shall procure and maintain for the duration of this Lease, at Tenant's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in accordance with the insurance requirements set forth in Exhibit C attached hereto.

**§ 5.2. Failure to Maintain Insurance.** If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s).

The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an Event of Default. No cure of such default can be

accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

## **ARTICLE 6 LANDLORD'S PERFORMANCE FOR TENANT**

If Tenant shall fail to pay any Imposition or make any other payment required to be made under this Lease or shall default in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, immediately and without notice. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the rate of eighteen percent (18%) per annum compounded monthly from the respective dates of the Landlord's making of each such payment or incurring of each such cost or expense, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

## **ARTICLE 7 USES AND MAINTENANCE**

**§ 7.1. Absence of Warranties.** Tenant has leased the Premises after a full and complete examination thereof, as well as the title thereto, and knowledge of its present uses and non-uses. Upon the Completion Date, Tenant will accept the same in its condition or state in which it has been constructed without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Throughout the Rental Period, Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Premises as provided herein, including, but not limited to, the performance of all burdens running with the Land.

**§ 7.2. Permitted Uses.** In no event shall the Premises or any part thereof be used for any purpose prohibited by this Lease. Regardless of the uses which would otherwise be allowed pursuant to the zoning classification or other ordinances which may be applicable to the Premises at any time during the Rental Period, the uses set forth in Exhibit D are expressly prohibited. Additionally, during the Rental Period, use of the Premises is hereby restricted to restaurant, entertainment, conference, retail, and office uses and ancillary uses related thereto and the Premises may not be used for any other purpose without the prior written consent of Landlord, which may be given or withheld at Landlord's commercially reasonable discretion subject to the provisions of A.R.S. §42-6209.C(3). It shall be commercially reasonable for Landlord to object to any change in use for which it is projected that the sales tax generated from the Premises will decrease by more than 25% in the calendar year following the change of use. Moreover, any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

**§ 7.3. Maintenance, Repairs, Indemnity.** Tenant shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, and shall maintain and keep the Premises and the sidewalks, curbs, and landscaping in good condition in accordance with City standards and this Lease, whichever is more stringent. Tenant shall also keep the sidewalks and gutters on the Premises free and clear from rubbish and shall not obstruct the same or allow the same to be obstructed in any manner. Tenant shall indemnify Landlord and save it harmless from any and all claims or demands, upon or arising out of any bodily injury or property damage occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, however caused, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises, subject to the provisions of Article 10 and Tenant's right to contest and appeal any claim. Notwithstanding the foregoing or any other provision of this Lease to the contrary, in no event shall any indemnification obligation of Tenant extend to or cover any damages or claims arising from or relating to the negligence or intentional acts or omissions of Landlord, its agents, employees, contractors or invitees.

**§ 7.4. Waste.** Tenant shall not commit or suffer to be committed any material waste or impairment of the Premises.

## **ARTICLE 8 COMPLIANCE**

Tenant shall assume and perform any and all obligations under any covenants, easements and agreements affecting the title to the Land. Tenant shall diligently comply, at its own expense during the Lease Term, with all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public

department, bureau, officer, or authority, or other body having similar functions, or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises. The foregoing shall apply whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises. Notwithstanding the foregoing, Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or prosecution for a crime.

## **ARTICLE 9**

### **CONSTRUCTION AND OPERATION OF NEW BUILDING**

**§ 9.1. The New Building.** The New Building shall be a five story building to be located at 40 E. Congress, Tucson, Arizona 85701. It is anticipated that the first, second and fifth floors will contain a combination of restaurants, entertainment, conference, recreation and retail venues, and that the third and fourth floors will contain offices. The rooftop may also be used for entertainment, conferences and dining. Tenant shall provide plans and specifications (the "Plans and Specifications") to the City for approval. Landlord shall also have the opportunity to review the Plans and Specifications. A sheet index of the Plans and Specifications is attached hereto as Exhibit E.

**§ 9.2. Government Approvals.** Tenant will also obtain any required approvals of the final Plans and Specifications by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter and provide conformed copies of executed approvals (if any) to Landlord.

**§ 9.3. Completion Requirements.** Tenant will cause to be constructed the New Building in a good, careful, proper, and workmanlike manner in substantial accordance with:

- A. The approved Plans and Specifications; and
- B. All provisions of law and any and all permits and authority required by ordinance, code, law, or public regulations or by any authority at any time having jurisdiction over the Premises.
- C. Subject to Enforced Delays, Tenant shall commence construction of the New Building on or before three (3) months after the Effective Date of this Lease and the Completion Date shall be no later than thirty (30) months after the Effective Date of this Lease.

**§ 9.4. Tenant's Management and Operating Covenant.** Following the Completion Date and continuing during the remainder of the Lease Term subject to Enforced Delays, Tenant shall prudently manage and continuously operate (or cause to be managed and continually operated) the New Building and will properly maintain (or cause to be maintained), at its expense, the New Building and all other improvements to the Premises in good repair, reasonable wear and tear excepted. Landlord shall have no obligation to repair, maintain, alter or modify the Premises or any part thereof, or any plumbing, heating, electrical, air conditioning or other mechanical installation therein. If Tenant fails to comply with the foregoing requirements within sixty (60) days after written notice from Landlord, Landlord may (but shall not be obligated to) effect such maintenance and repair subject to the rights of Tenant and subtenants, and Landlord's actual cost shall be due and payable as additional rent to Landlord within ten (10) days after Landlord's written demand.

## **ARTICLE 10 IMPAIRMENT OF LANDLORD'S TITLE**

**§ 10.1. No Mechanics' Liens.** Subject to the right of contest and appeal, Tenant shall not create, or suffer to be created or to remain, and shall discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be materially impaired.

The provisions of this Article 10 are not intended to limit the Deeds of Trust or any rights Tenant may have under Article 4 of this Lease.

**§ 10.2. Discharge.** If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise (or shall commence and diligently pursue such actions as will achieve such result). Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded.

**§ 10.3. No Implied Consent.** Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's express or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

**§ 10.4. No Agency Intended.** The parties acknowledge that Tenant is required to operate and maintain (or cause to be operated and maintained) the New



Building as provided herein. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the operation or maintenance of any improvement on the Premises, the same to be accomplished at the sole expense of Tenant.

## **ARTICLE 11 INSPECTION**

Landlord may enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant, provided that such entry does not interfere with Tenant's business operations or the operations of any assignee or subtenant and provided that Landlord shall give Tenant at least seventy-two (72) hours written notice prior to any inspection of any building interior and such inspection shall occur during normal business hours.

This notice provision shall not be construed to prohibit or delay any entry authorized by any writ or warrant issued by any Court, nor to any emergency entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

## **ARTICLE 12 INDEMNIFICATION**

§ 12.1. Except for any claims and liability which could have been asserted against Landlord if Landlord were not the owner of the Premises or if Landlord were not a party to this Lease and except for any claims and liability arising out of Landlord's failure to perform as required under this Lease or for Landlord's gross negligence or willful misconduct or while Landlord is in possession of the Premises, Tenant shall indemnify and save Landlord harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following:

- (1) operation or maintenance of the New Building or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents;
- (2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or improvements or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof in a safe condition;
- (3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or improvements or any part thereof;

(5) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents or subtenants;

(7) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed or performed;

(8) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or improvements, the New Building or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(9) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the Rental Period.

Notwithstanding the foregoing, it is explicitly acknowledged and agreed by the parties that neither Tenant nor Landlord shall have any obligation to indemnify and save the other party harmless from any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of or in connection with the power or authority of either party, or the terms and conditions of this Lease by an unrelated third-party.

§ 12.2. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and save the Landlord harmless from any loss or damage thereto by any cause whatsoever other than the negligence or willful conduct of Landlord, its agents, employees and contractors.

§ 12.3. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

§ 12.4. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys selected by Tenant as Landlord shall approve, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend it or to assist in its defense at Landlord's sole expense.

§ 12.5. The provisions of this Article 12 shall survive the expiration or other termination of this Lease for a period of three years.

§ 12.6. Notwithstanding anything to the contrary in this Lease, the indemnification obligations set forth in this Article 12 and elsewhere in this Lease shall not extend liability to or apply to BOT, BOT's nominee or any successor of BOT or BOT's nominee, for so long as BOT, BOT's nominee or any successor of BOT or BOT's nominee does not foreclose on Tenant's leasehold interest. Furthermore, if BOT, BOT's nominee, or any successor of BOT or BOT's nominee (including any purchaser by foreclosure sale, trustee's sale, or deed in lieu of foreclosure) does foreclose or otherwise succeeds to Tenant's interest hereunder, then (i) in no event shall such successor Tenant incur liability for the acts or omissions of the prior Tenant (including any indemnification obligations under this Article); it being understood and agreed that the successor Tenant shall only be liable for its own acts arising from and after the succession of Tenant's leasehold estate hereunder, and (ii) an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

### **ARTICLE 13 DAMAGE OR DESTRUCTION**

§ 13.1. In the event that all or any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other insurable casualty, then, subject to Tenant's rights to terminate this Lease, this Lease shall continue in full force and effect, and Tenant, at Tenant's sole cost and expense (subject only to the provisions of the Deeds of Trust and any other secured financing), shall be obligated to, rebuild or repair the same if Tenant does not elect to terminate this Lease. Landlord and Tenant agree that the provisions of A.R.S. §33-343 shall not apply to this Lease. In the event that Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be entitled to such proceeds (subject only to the provisions of the Deeds of Trust and any other secured financing), whether or not Tenant rebuilds or repairs the improvements or fixtures. If 75% or more of the square footage of the structural component of the New Building on the Premises is substantially damaged or destroyed by fire or other casualty at any time during the last three years of the Lease Term either Landlord or Tenant may, on sixty (60) days' written

notice given within sixty (60) days after the occurrence of the casualty, terminate this Lease, in which case title to the Premises shall be conveyed to Tenant pursuant to Article 27 who shall take the Premises in an "as is" condition.

## **ARTICLE 14 CONDEMNATION**

**§ 14.1. Entire or Partial Condemnation.** If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the Lease Term, this Lease shall terminate with respect to the part of the Premises so taken and any other portion of the Premises as may be specified by Tenant, and, subject to the provisions of the Deeds of Trust, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its interest herein (as well as relocation and moving costs), including with respect to the following sentence. In consideration of Tenant's payment for all of the cost of construction of the New Building, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain, including, without limitation, any claims for loss of fee title interest in the Premises.

**§ 14.2. Continuation of Lease.** In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken or specified by Tenant to be removed from this Lease.

**§ 14.3. Temporary Taking.** If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken by an affirmative exercise of eminent domain, the Lease Term shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of the Deeds of Trust.

**§ 14.4. Notice of Condemnation.** In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the Premises or Tenant's leasehold estate or any part thereof, or the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to the Beneficiaries under the Deeds of Trust and any secured lender. Landlord, Tenant and the Beneficiaries under the Deeds of Trust and any secured lender shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking (taking into account Landlord's assignment pursuant to the last sentence of Section 14.1). No agreement, settlement, conveyance or transfer to or with the condemning authority affecting the Premises or Tenant's leasehold interest shall

be made without the consent of Tenant and each Beneficiary under the Deeds of Trust and any secured lender.

**ARTICLE 15**  
**ASSIGNMENT AND SUBLETTING**

**§ 15.1. Transfers by Tenant**

**A. Landlord's Consent.** Prior to and after the Completion Date, Tenant shall obtain Landlord's prior written approval of any transfer, conveyance, assignment, sublease or other pledge, encumbrance or disposal of all or a portion of its interest in this Lease (a "Transfer"), which approval shall not be unreasonably withheld, conditioned or delayed, if such Transfer is not otherwise expressly authorized by this Lease. Notwithstanding the foregoing, Landlord's approval shall not be required in connection with:

- (1) any Transfer to an Affiliate of Tenant; or
- (2) the Notes and Deeds of Trust, and subject to Section 1.4(A) above, any other pledge, assignment, mortgage, deed of trust, collateral assignment, encumbrance, agreement for sale or similar financing or refinancing transaction to any lender which provides acquisition, construction, permanent, working capital, tenant improvement or other financing, directly or indirectly, to Tenant for all or any part of the Premises, or the exercise of remedies by any lender; or
- (3) a Transfer to a successor in interest of Tenant with respect to all or part of the Premises, if (a) Tenant remains responsible for the performance of its obligations under this Lease; (b) the Transfer is accompanied by express written assumption in recordable form acceptable to Landlord by such successor of Tenant's rights and obligations under this Lease; and (c) either Tenant or an Affiliate of Tenant remains in control of the Premises through a management agreement, joint venture (or similar) agreement or otherwise through the Completion Date; or
- (4) any ordinary course of business sublease of all or part of the Premises, including, without limitation, a sublease of a retail or restaurant facility, banquet facility, or office.

**B. Assumption Instrument.** Except for the Notes and Deeds of Trust (which are hereby acknowledged and approved by Landlord), no Transfer shall be binding upon Landlord unless such assignee or purchaser shall deliver to the Landlord a recordable instrument which contains a covenant of assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth. Upon recordation of the assumption instrument, the prior tenant shall be released from liabilities and obligations under this Lease accruing thereafter, and the assignee shall be and become and remain liable for the payment of Net Rent and Additional Payments and for the due performance of all the

covenants, agreements, terms and provisions hereof on Tenant's part to be performed throughout the remainder of the Lease Term. The provisions hereof shall be operative for and apply to each subsequent assignment.

**§ 15.2. Subleases.** Tenant may sublease (each, a "Sublease") all or portions of the Premises in the normal course of Tenant's business for occupancy consistent with the uses permitted by Section 7.2 of this Lease, subject to the rights of Landlord, and neither the consent of Landlord nor the assumption of this Lease shall be required in connection with such renting or subleasing if all of the conditions set forth below are satisfied:

A. Each Sublease shall be subject and subordinate to this Lease and the rights of Landlord;

B. Any violation of any provision of this Lease, whether by act or omission by any subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the parties that Tenant shall assume and be liable to Landlord for any and all acts and omissions of any and all subtenants with respect to this Lease.

C. Tenant shall require in each Sublease that each subtenant provide Tenant for each calendar month during the term of such Sublease with a copy of its Transaction Privilege, Use, and Severance Tax Return (the "TPT Return") as filed with the Arizona Department of Revenue.

D. Tenant shall deliver to the Landlord on or before the 15<sup>th</sup> day of each calendar month during the Lease Term, commencing on the first full month after the Commencement Date, a calculation showing the aggregate TIF Receipts generated by the subtenants for the previous calendar month, together with copies of the TPT Return of each subtenant with the name of and any other identifying information concerning such subtenant redacted.

**§ 15.3. Rent From Assignee.** If this Lease is assigned in whole or in part, whether or not in violation of the provisions hereof, Landlord may and hereby is empowered to collect rent from the assignee. In such event, Landlord may apply the net amount received by it to Net Rent and Additional Payments, and no such collection shall be deemed a waiver of the covenant herein against assignment, or an acceptance of the assignee or subtenant as a Tenant under this Lease, or a release of Tenant from the further performance of the covenants herein contained on the part of Tenant.

**§ 15.4. Assignment of Subleases.** Tenant hereby assigns to Landlord, effective upon the occurrence of any Event of Default hereunder following the applicable notice and cure period, and so long as such Event of Default remains uncured, as collateral security for the performance of all obligations of Tenant under this Lease, any sublease created by Tenant and each and every amendment, modification, or extension thereof. In no event shall such assignment impose upon Landlord any duty or obligation to perform any of the obligations of Tenant as landlord under any such lease or subleases prior to Landlord taking possession of the Premises. After default by Tenant, Landlord may collect the rents and subrents from any and all subtenants or occupants and apply the

net amount collected to the Net Rent and Additional Payments, but no such collection by Landlord will be deemed to be a waiver of any agreement, term, covenant, or condition of this Lease by Landlord, nor the acceptance by Landlord of any subtenant or occupant, as Tenant. The assignment in this Section 15.4 shall be subordinate to the assignment of rents to the Beneficiaries under the Deeds of Trust, and Landlord shall promptly execute and deliver to the Beneficiaries under the Deeds of Trust suitable documents or instruments confirming the seniority of such Beneficiary's rights if requested by a Beneficiary.

**§ 15.5. Landlord's Lien Waiver.** At Tenant's request, Landlord agrees to execute a form of landlord's lien waiver with respect to Tenant's (or its subtenants') financing of any personal property located on the Premises, subject to Landlord's review and approval of any such landlord's lien waiver form.

**§ 15.6. Trade Fixtures, Machinery and Equipment.** Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will, or will cause its subtenants to, repair or restore the same at Tenant's sole cost and expense. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, lessors, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, lessor, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, lessor, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, lessor, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord. Notwithstanding the foregoing, to the extent the Deeds of Trust contradict this provision, the terms of the Deeds of Trust control.

## **ARTICLE 16**

### **DEFAULT BY TENANT/RIGHTS UPON TERMINATION**

**§ 16.1. Events of Default.** The happening of any one of the following events after the applicable notice and cure period (herein called "Events of Default") shall be considered a material breach and default by Tenant under this Lease:



**A. Monetary Default.** If default shall be made in the due and punctual payment of any Net Rent or Additional Payments and such default continues for thirty (30) days after written notice thereof to Tenant (a "Monetary Default"); or

**B. Non-Monetary Default.** If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such thirty (30) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required thirty (30) days, its time to do so shall be extended by the time reasonably necessary to cure the same as determined by Landlord) (a "Non-Monetary Default"); or

**C. Bankruptcy, Voluntary.** If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

**D. Bankruptcy, Involuntary.** If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

**E. Insurance, Lapse or Termination.** Notwithstanding the provisions of paragraph B, above, the lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

**§ 16.2. Notice and Termination.** Upon the occurrence of one or more of the Events of Default listed in Section 16.1, the Landlord at any time thereafter, but not after such Event of Default is cured, may give written notice ("Second Notice") to Tenant specifying such Event(s) of Default and stating that this Lease and the Lease Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least forty-five (45) days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to the rights of Tenant and Beneficiaries under this Agreement and the rights of Beneficiaries under the Deeds of Trust and prior to such

date, this Lease and the Lease Term hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof, and upon such termination, the terms of Article 27 shall control.

**§ 16.3. Tenant Liability.** In the event that Landlord terminates this Lease due to an Event of Default after the Second Notice and the expiration of the applicable notice and cure periods and subject to the senior rights of the Beneficiaries under this Agreement and the Deeds of Trust, Tenant shall pay Landlord the outstanding Net Rent and Additional Payments due and payable. Alternatively, in addition to any other remedies available to Landlord at law or in equity, Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Net Rent and Additional Payments as they become due.

**§ 16.4. No Implied Waivers.** No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial Net Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

**§ 16.5. Remedies Cumulative.** In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach, provided that if any such remedy involves the termination of this Lease, the terms of Article 27 shall control. In the event of Tenant's failure to pay Net Rent or Additional Payments on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of two percent (2%) per month, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant.

**§ 16.6. Self-Help.** If an Event of Default is not commenced to be cured within thirty (30) calendar days after service of the notice of default and is not cured promptly in a commercially reasonable and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, enter upon the Premises subject to the provisions of Article 11, and cure such Event of Default, in which event Landlord may charge Tenant for its hard and soft costs, together with an administrative and mobilization expense not to exceed ten percent (10%) of all such costs, which shall be paid to Landlord within ten (10) days after receipt of an invoice for such costs.

**§ 16.7. Termination Option.**

**A. Grant of Option.** Regardless of the existence or alleged existence of any Event of Default, Tenant or its successor, including any successor to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "Foreclosure"), shall have the option, exercisable by written notice to Landlord, for any reason or for no reason, to terminate this Lease (the "Option") as to the entire Premises, with such termination becoming effective on the date which is sixty (60) days after the date of the notice. Simultaneously with, and effective as of such termination, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant or Tenant's successor, as the case may be, and Landlord shall comply with its obligations under Article 27.

**B. Deeds of Trust and Tenant.** If the Construction Deed of Trust encumbers the Premises, Tenant may not exercise, terminate, modify or waive its Option under this Section 16.7 without the prior written approval of the Beneficiary under the Construction Deed of Trust, which consent may be withheld in its sole and absolute discretion.

**§ 16.8. Deeds of Trust Default Protections.** Notwithstanding anything to the contrary in this Lease, until the time, if any, that the Construction Deed of Trust shall be satisfied and released of record or the Beneficiary under the Construction Deed of Trust shall give to Landlord written notice that said Construction Deed of Trust has been satisfied, each of the following shall apply.

**A. Consent of Beneficiary under Construction Deed of Trust.** No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any Beneficiary under the Construction Deed of Trust without its prior written consent.

**B. Notice to Beneficiary under Construction Deed of Trust.** If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Beneficiary under the Construction Deed of Trust at the address designated by the Beneficiary under the Construction Deed of Trust. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Beneficiary under the Construction Deed of Trust. No Notice given by Landlord to Tenant shall be binding upon the Beneficiary under the Construction Deed of Trust unless a copy of the Notice shall be given to the Beneficiary under the Construction Deed of Trust pursuant to this subsection. In the case of an assignment of a Beneficiary under the Construction Deed of Trust or change in address of a Beneficiary under the Construction Deed of Trust, the assignee or Beneficiary under the Construction

Deed of Trust, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

**C. Beneficiary under the Construction Deed of Trust Cure Rights.** Landlord shall provide written notice of any Event of Default under this Lease to Beneficiary under the Construction Deed of Trust and Beneficiary under the Construction Deed of Trust shall have the cure rights set forth in this Section 16.8.C. If Tenant fails to cure an Event of Default within the applicable cure period, then the Beneficiary under the Construction Deed of Trust shall have the right for a period of forty-five (45) days after the later of (i) written notice to the Beneficiary under the Construction Deed of Trust that Tenant has so failed to cure, and (ii) the end of the applicable cure period to perform any term, covenant, or condition and to remedy any Event of Default by Tenant hereunder or such longer period as the Beneficiary under the Construction Deed of Trust may reasonably require to effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant. Landlord agrees that the Beneficiary under the Construction Deed of Trust shall not be required to pay default interest to cure any payments defaults by Tenant. The Beneficiary under the Construction Deed of Trust shall have the right to enter upon the Premises to give such performance.

**D. Prosecution of Foreclosure of Other Proceedings.** In case of a Non-Monetary Default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Beneficiary under the Construction Deed of Trust without taking possession of the Premises, in such Beneficiary under the Construction Deed of Trust's reasonable opinion, or if such default is not susceptible of being cured by the Beneficiary under the Construction Deed of Trust, then Landlord shall not serve a notice of lease termination pursuant to Section 16.2, if and so long as:

(i) the Beneficiary under the Construction Deed of Trust shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such Events of Default as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Beneficiary under the Construction Deed of Trust from obtaining such possession); or

(ii) the Beneficiary under the Construction Deed of Trust shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Beneficiary under the Construction Deed of Trust from obtaining such possession).

The Beneficiary under the Construction Deed of Trust shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to

Clause (i) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (ii) above, if and when such Event of Default has been cured. Notwithstanding anything in this Lease to the contrary, if Beneficiary, its nominee, or any successor for Beneficiary or Beneficiary's nominee (including any purchaser by foreclosure sale, trustee's sale, or deed in lieu of foreclosure) succeeds to Tenant's interest hereunder, then (i) in no event shall such successor Tenant incur liability for the acts or omissions of the prior Tenant; it being understood and agreed that the successor Tenant shall only be liable for its own acts arising from and after the succession of Tenant's leasehold estate hereunder, and (ii) an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

**E. Extension of Foreclosure of Other Proceedings.** If any Beneficiary under the Construction Deed of Trust is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in Section 16.8.D (i) and (ii) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

**F. Additional Consent of Beneficiary under Construction Deed of Trust.** No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Beneficiary under the Construction Deed of Trust.

**G. Rights of Beneficiary under Subordinated Deed of Trust.** At such time, if any, that the Construction Deed of Trust has been satisfied and released of record, and if at such time the Subordinated Deed of Trust remains of record, the secured lender protections set forth in this Section 16.8 shall apply to the Beneficiary under the Subordinated Deed of Trust.

#### **§ 16.9. New Lease.**

**A. Right to Lease.** Landlord agrees that, in the event of termination of this Lease (including but not limited to an Event of Default by Tenant), Landlord, if requested by the Beneficiary under the Construction Deed of Trust, will enter into a new lease of the Premises with the Beneficiary under the Construction Deed of Trust requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and, subject to applicable law, upon the terms, covenants and conditions herein contained, provided:

(i) Such Beneficiary under the Construction Deed of Trust shall make written request upon Landlord for the new lease within sixty (60) days after the date such Beneficiary under the Construction Deed of Trust receives written notice from Landlord that the Lease has been terminated;

(ii) Such Beneficiary under the Construction Deed of Trust shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such termination; and

(iii) Such Beneficiary under the Construction Deed of Trust shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Beneficiary under the Construction Deed of Trust.

**B. Right of Occupancy.** The Tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

**C. Priority.** Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 16.9 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee title to the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by the termination of this Lease.

**D. No Obligation.** Nothing herein contained shall require any Beneficiary under the Construction Deed of Trust to enter into a new lease pursuant to this Section 16.9 or to cure any default of Tenant referred to above.

**E. Possession.** If any Beneficiary under the Construction Deed of Trust shall demand a new lease as provided in this Section 16.9, Landlord agrees, at the request of, on behalf of and at the expense of the Beneficiary under the Construction Deed of Trust, upon assurances from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

**F. Grace Period.** Unless and until Landlord has received notice from the Beneficiary under the Construction Deed of Trust that the Beneficiary under the Construction Deed of Trust elects not to demand a new lease as provided in this Section 16.9, or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of the Beneficiary under the Construction Deed of Trust.

**G. Effect of Transfer.** Neither the foreclosure of any Deeds of Trust (whether by judicial proceedings or by virtue of any power of sale contained in the Deeds of Trust), nor any conveyance of the leasehold estate created by this Lease by Tenant to

any Beneficiary under the Deeds of Trust or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

**H. Rights of Beneficiary under Subordinated Deed of Trust.** At such time, if any, that the Construction Deed of Trust has been satisfied and released of record, and if at such time the Subordinated Deed of Trust remains of record, the secured lender protections set forth in this Section 16.9 shall apply to the Beneficiary under the Subordinated Deed of Trust.

## **ARTICLE 17 DEFAULT BY LANDLORD**

**§ 17.1. Limitations of Landlord's Liability.** Landlord's liability hereunder for any default shall be limited to the value of the Premises and shall not extend to any other assets of Landlord.

**§ 17.2. Remedies.** In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

## **ARTICLE 18 UNENFORCEABLE TERMS**

Landlord and Tenant each believes that the execution, delivery and performance of this Lease are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Lease is declared void or unenforceable (or is construed as requiring the Landlord to do any act in violation of any Applicable Law, including any constitutional provision, law, regulation, City Code or City Charter), such provision shall be deemed severed from this Lease and this Lease shall otherwise remain in full force and effect. Upon such occurrence, this Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the parties as if such severance and reformation were not required. Unless prohibited by Applicable Laws, the parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Lease, as reformed.

## **ARTICLE 19 NOTICES**

Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, except as pursuant to Article 11, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other party at the address as set forth below:

If to Landlord:

Rio Nuevo Multipurpose Facilities District  
Attention Chairman Fletcher McCusker  
400 W. Congress #152  
Tucson, Arizona 85701

With a copy to:

Mark Collins, Esq.  
Gust Rosenfeld P.L.C.  
1 S. Church Ave. #1900  
Tucson, Arizona 85701

If to Tenant:

BP City Park Investors, LLC  
Attention Toufic Abi-Aad  
20 East Congress, Suite 300  
Tucson, Arizona 85701

With a copy to:

GinaMarie K. Spencer, Esq.  
Mendelsohn Oseran & Spencer, PLC  
2525 E. Broadway Blvd., Suite 201  
Tucson, Arizona 85716

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder two business days after it shall be mailed by United States registered or certified mail, postage prepaid, in any post office or branch post office regularly maintained by the United States Government, upon personal delivery, or one business day after deposit with any commercial air courier or express service.

## **ARTICLE 20 CONDITION**

**§ 20.1. Condition of Premises.** Tenant represents that the Land, any sidewalks, vaults, the title to the Premises, any subsurface conditions thereof, and the



present uses and non-uses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

**§ 20.2. AS IS.** EXCEPT AS PROVIDED HEREIN, NEITHER LANDLORD NOR ANYONE ACTING FOR OR ON BEHALF OF LANDLORD, HAS MADE ANY REPRESENTATION, WARRANTY, STATEMENT OR PROMISE TO TENANT CONCERNING THE PREMISES, OR THE QUALITY, VALUE, FEASIBILITY, DESIRABILITY, THE IMPROVEMENTS FOR OR INTO ANY PARTICULAR USE, THE CURRENT OR PROJECTED INCOME OR EXPENSES OF THE PREMISES, OR ANY OTHER MATTER WITH RESPECT TO THE PREMISES; THAT IN ENTERING INTO THIS LEASE, TENANT HAS NOT RELIED UPON ANY REPRESENTATION, STATEMENT OR WARRANTY OF LANDLORD OR ANYONE ACTING FOR OR ON BEHALF OF LANDLORD, OTHER THAN AS EXPRESSLY CONTAINED IN THIS LEASE; AND TENANT DOES HEREBY WAIVE AND LANDLORD DOES HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND OR TYPE WHATSOEVER WITH RESPECT TO THE PREMISES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MARKETABILITY, MERCHANTABILITY AND TITLE, FITNESS FOR A PARTICULAR PURPOSE, TENANTABILITY, HABITABILITY, OR USE, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL ACCEPT THE PREMISES "AS-IS" AND "WHERE-IS" AT THE EFFECTIVE DATE, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET FORTH HEREIN, LANDLORD MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OR SAFETY OF THE PREMISES.

## **ARTICLE 21**

### **QUIET ENJOYMENT**

**§ 21.1. Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Initial Rent and Net Rent and Additional Payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the Lease Term, without hindrance or molestation by Landlord.

**§ 21.2. Protection of Subtenant.** Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) agrees that, so long as a subtenant within the Premises complies with the terms and conditions of its Sublease, it shall not disturb the peaceful possession of the subtenant under its Sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the subtenant's

Sublease, (ii) shall recognize the continued existence of the Sublease, (iii) shall accept the subtenant's attornment, as subtenant under the Sublease, to Landlord, as landlord under the Sublease, and (iv) shall be bound by the provisions of the Sublease, including all options, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession that affects a subtenant's rights under its Sublease shall be binding upon or effective as against such subtenant without its prior written consent. All subtenants are third-party beneficiaries of this Section 21.2.

## **ARTICLE 22 ESTOPPEL CERTIFICATE**

Landlord and Tenant shall at any time and from time to time upon not less than twenty (20) days' prior written notice from the other party or any Beneficiary under the Deeds of Trust execute, acknowledge and deliver to the other party or the Beneficiary under the Deeds of Trust a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's or Tenant's respective knowledge, any uncured defaults on the part of Landlord or Tenant hereunder, as applicable, specifying such defaults if they are claimed; and (iii) certifying such other matters relating to this Lease as the other party or the Beneficiary under the Deeds of Trust may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises and/or the improvements. Landlord's or Tenant's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord or Tenant, as applicable (x) that this Lease is in full force and effect, without modification except as may be represented by Tenant or Landlord, as applicable; (y) that there are no uncured defaults in Tenant's or Landlord's performance, as applicable; and (z) the accuracy of such other matters relating to this Lease as Tenant, Landlord or the Beneficiary under the Deeds of Trust may have been set forth in the request.

## **ARTICLE 23 CONSENTS**

**§ 23.1. Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if a party fails to notify the other party in writing within thirty (30) days (except where a longer period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

**§ 23.2. No Unreasonable Withholding.** Wherever in this Lease the consent or approval of a party is required, such consent or approval shall not be unreasonably withheld, conditioned nor delayed, except where otherwise specifically provided. The remedy of the party requesting such consent or approval, in the event such party should claim or establish that the other party has unreasonably withheld, conditioned or delayed such consent or approval, shall be limited to injunction or declaratory judgment and in no event shall the other party be liable for a money judgment.

#### **ARTICLE 24 LANDLORD NOT LIABLE**

Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Premises or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor.

#### **ARTICLE 25 ENFORCED DELAY**

**§ 25.1. Enforced Delay; Extension of Time of Performance.** Whether stated or not, all periods of time in this Lease are subject to this Section. Neither the Landlord nor Tenant, as the case may be, shall be considered to have caused an Event of Default with respect to its obligations under this Lease (or to have failed to meet any required date of performance) in the event of enforced delay (an "Enforced Delay") due to:

A. causes beyond its reasonable control and without its negligent or intentional failure to comply with the terms hereof, including, but not restricted to, acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, litigation or other action authorized by law concerning the validity and enforceability of this Lease or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity,

or declaration of moratorium or similar hiatus directly affecting the Premises (whether permanent or temporary) by any public, quasi-public or private entity;

**B.** the discovery of Regulated Substances (defined in Article 27 below) on, at or affecting the Premises not disclosed by any applicable environmental assessment or otherwise known by or disclosed to the Party or Parties affected thereby; the discovery of funerary objects or archaeological resources or artifacts on, at or affecting the Premises requiring repatriation, study, removal or further acts mandated by federal or state law; or the discovery of Endangered Species on, at or affecting the Premises;

**C.** the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body (collectively, an "Order") which delays the completion of the work or other obligation of the Party claiming the delay; or the suspension, termination, interruption, denial, or failure of renewal (collectively, a "Failure") of issuance of any permit, license, consent, authorization, or approval necessary to Tenant's or Landlord's undertakings pursuant to this Lease, unless it is shown that such Order or Failure is the result of the failure to comply with Applicable Laws or to fully comply with the applicable application requirements by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay;

**D.** the denial of an application, failure to issue, or suspension, termination, delay or interruption other than by or from the Tucson Mayor and City Council or one of the City's departments, divisions, agencies, commissions or boards (collectively, a "Denial") in the issuance or renewal of any permit, approval or consent required or necessary in connection with Tenant's or Landlord's undertakings pursuant to this Lease, if such Denial is not also the result of the failure to comply with Applicable Laws or to fully comply with the applicable application requirements by the Party claiming the delay; provided that the contesting in good faith or the failure in good faith to contest any such Denial shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay;

**E.** unreasonable delay by the City in processing any application, request for approval, plan or submittal by Landlord or Tenant or the imposition of any unreasonable requirement by the City in connection with any approval process provided that all initial submittals by Landlord or Tenant are completed and that all subsequent submittals address all comments made by City reviewers; and

**F.** the failure of any contractor, subcontractor or supplier to furnish services, materials or equipment in connection with Tenant's or Landlord's undertakings pursuant to this Lease, if such failure is caused by Enforced Delay as defined herein, if and to the extent, and only so long as the Party claiming the delay is not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment of comparable quality and cost.

**§ 25.2. Enforced Delay; Exceptions and Notice.** In no event will Enforced Delay include any delay resulting from general economic or market conditions, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Landlord or Tenant in connection with the Project. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Article 25 shall, within thirty (30) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party.

## **ARTICLE 26 COMPLIANCE WITH ENVIRONMENTAL LAWS**

### **§ 26.1. Definitions.**

**A. "Environmental Laws":** Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§ 651-678; Pima County Air Pollution Control Regulations; Title 41, Chapter 4.1, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

### **B. "Regulated Substances":**

(1) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§ 6991 to 6991i.

(2) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. §49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. §49-281 *et seq.*; the Solid Waste

Management Act, A.R.S. §49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. §49-1001 *et seq.*; and Management of Special Waste, A.R.S. §§49-851 to 49-868.

(3) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the Lease Term.

C. **"Release":** Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

**§ 26.2. Compliance.** Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, that Tenant is required by Applicable Law to comply with affecting Tenant's leasehold and/or operation on the Premises.

Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or Released on or under the Premises, or transported to or from the Premises, by Tenant, its agents, employees, sublessees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Tenant may provide for the treatment of certain discharges regulated under the pretreatment ordinances pursuant to the Tucson City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*

### **§ 26.3. Indemnification.**

A. Tenant shall indemnify, defend and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises during the Lease Term or term of any previous lease or uses of the Premises by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, sublessee, visitors or licensees. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Article 26 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises during the Lease Term. This indemnification of Landlord by Tenant includes, without limitation,

costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, under the Premises, or that have migrated from the Premises. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Article and that Landlord shall also have the rights set forth in this Article in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall not apply to: (i) matters to the extent they result from the gross negligence or willful misconduct of Landlord; or (ii) conditions or occurrences arising only after Landlord has taken exclusive possession of, the Premises, except to the extent such conditions or occurrences have arisen from or been accumulated with any condition or occurrence not caused by Landlord that existed or occurred prior to the Landlord's exclusive possession.

**B.** Without limiting the foregoing, if the presence of any Regulated Substance on or under the Premises results in any contamination of the Premises or any adjacent real property during the Lease Term, Tenant shall promptly take all actions at its sole cost and expense as are required pursuant to the Environmental Laws to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action as are required pursuant to the Environmental Laws to return the Premises or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises. Tenant shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

**C.** Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential Releases of Regulated Substances on or under the Premises during the Lease Term. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access and copies, within ten (10) days of Tenant's receipt of written request, any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on or under the Premises.

D. Tenant shall immediately notify Landlord of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Tenant's use of the Premises, (2) any change in Tenant's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Article.

E. Subject to approval of a sublease by Landlord pursuant to Article 15 above, Tenant shall insert the provisions of this Article 26 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

F. Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises by the Tenant, its agents, employees, contractors, invitees, assigns and sublessees.

G. Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

#### **§ 26.4. Noncompliance.**

A. Tenant's failure or the failure of its agents, employees, contractors, invitees, sublessees or of a third party to comply with any of the requirements and obligations of this Article 26 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Article shall not release Tenant from any obligation it would otherwise have hereunder.

B. The covenants in this Article 26 shall survive the expiration or earlier termination of this Lease for a period of two (2) years.

### **ARTICLE 27 SURRENDER, RECONVEYANCE**

**§ 27.1. Reconveyance Upon Termination or Expiration.** On the Termination Date or upon any sooner termination of this Lease, whether under Article 16, or otherwise, fee title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant or its successor, as the case may be, provided, however, that such automatic vesting shall not occur for any termination of this Lease if a



Beneficiary under the Construction Deed of Trust (or Subordinated Deed of Trust, as applicable under Section 16.9.H) exercises its rights under Section 16.9 and enters into a new lease as described therein, or until Landlord has received notice from the Beneficiary under the Construction Deed of Trust (or Subordinated Deed of Trust, as applicable under Section 16.9.H) that the Beneficiary under the Construction Deed of Trust (or Subordinated Deed of Trust, as applicable under Section 16.9.H) elects not to demand a new lease as provided in Section 16.9 or until the period therefor has expired. Without limiting the generality of Section 16.9.A, such new lease shall include this Article 27 which will allow the title to the Premises to vest in Beneficiary under the Construction Deed of Trust (or Subordinated Deed of Trust, as applicable under Section 16.9.H), as the new Tenant thereunder, or any successor in interest to such Beneficiary under the Construction Deed of Trust (or Subordinated Deed of Trust, as applicable under Section 16.9.H), upon the expiration or other termination of such new lease. Such vesting of title shall be at no cost to Tenant or its successor other than as set forth in Section 27.4 below.

**§ 27.2. Reconveyance Documents.** Without limiting the foregoing, Landlord shall execute and deliver: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Premises to Tenant in the form of the deed set forth on Exhibit F; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which Landlord is a party and which are assignable by Landlord, and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, Foreign Investment in Real Property Tax Act of 1980 and mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises in all respects in Tenant or its successor, or Tenants' successor by foreclosure, as the case may be.

**§ 27.3. Title and Warranties.** Notwithstanding anything to the contrary in this Section, Landlord shall convey the Premises by special warranty deed subject only to: (i) matters affecting title as of the Effective Date of this Lease, and (ii) matters created by or with the written consent of Tenant and the Beneficiaries of the Deeds of Trust. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever except as to the warranties of title set forth in the deed. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord, if any, but such encumbrances specifically exclude any encumbrance on the Premises by Landlord as a Beneficiary under the Subordinated Deed of Trust.

**§ 27.4. Expenses.** All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance (except Landlord's own attorneys' fees) shall be paid by Tenant.

The provisions of this Section 27 shall survive the expiration or other termination of this Lease.

## ARTICLE 28

## MISCELLANEOUS

**§ 28.1. Landlord's Right of Cancellation.** The parties hereto acknowledge that this Lease is subject to cancellation for conflict of interest pursuant to A.R.S. §38-511, the pertinent provisions of which are incorporated herein by reference.

**§ 28.2. Legal Actions.** Any legal action instituted pursuant to this Lease shall be brought in the County of Pima, State of Arizona, or in the Federal District Court in the District of Arizona. The prevailing party in such action shall be reimbursed by the non-prevailing party for all costs and expenses of such action, including reasonable attorneys' fees as may be fixed by the Court. This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

**§ 28.3. Memorandum.** The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Triple Net Government Property Lease Excise Tax, in the form of Exhibit G attached hereto and incorporated herein by this reference.

**§ 28.4. Entire Agreement.** This Lease, together with its schedules and Exhibits and all documents incorporated herein by reference, contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant as landlord and tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

**§ 28.5. Captions.** The captions of Articles and Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

**§ 28.6. Execution and Delivery.** This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant in accordance with Article 19.

**§ 28.7. Singular and Plural, Gender.** If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants" and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

**§ 28.8. Multiple Parties.** If at any time Landlord or Tenant (Landlord and Tenant being referred to in this Section as a "party") is other than one individual,

partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

**§ 28.9. No Third Party Beneficiaries.** Except as specifically provided herein, no third party other than the Beneficiaries under the Deeds of Trust shall be entitled to rely upon, benefit from or enforce the terms of this Lease. No provision in this Lease is intended to nor shall it in any way inure to the benefit of any third party so as to constitute a third party beneficiary under this Lease, other than the Beneficiaries under the Deeds of Trust, which shall include all rights under Article 27, and the subtenants under Section 21.2.

**§ 28.10. Exhibits and Incorporation.** The following exhibits, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth:

Exhibit "A"	Legal Description
Exhibit "B"	Net Rent Schedule
Exhibit "C"	Insurance Requirements
Exhibit "D"	Prohibited Uses
Exhibit "E"	Plans and Specifications
Exhibit "F"	Form of Special Warranty Deed
Exhibit "G"	Form of Memorandum of Triple Net Government Property Lease Excise Tax

**§ 28.11. Attorneys' Fees.** Except as set forth in Section 28.2, each party shall bear its own attorneys' fees in the preparation of this Lease and any other documents related to the Premises.

**§ 28.12. Time of Essence.** Time is of the essence of this Lease.

**§ 28.13. Ownership of Premises for Income Tax Purposes.** To the extent it is allowed by applicable tax law and to the extent that Landlord would not be in violation of any of the codes and statutes governing its operations, Landlord and Tenant agree to treat Tenant as owner of the Premises for federal income tax purposes during the term of this Lease, which includes but is not limited to filing all income tax returns and related documents consistent with such treatment and to cooperate with each other as requested to achieve such result.

**§ 28.14. Nonrecourse.** Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

**§ 28.15. Transfer or Encumbrance of Landlord's Interest.** Landlord shall not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant and BOT, which consent may be given or withheld in their respective sole and absolute discretion; provided that if Landlord entity is terminated under Applicable Law, Landlord may transfer the Premises and assign its rights and obligations under this Lease for the remainder of the Lease Term to the City, subject to the City's acceptance and written assumption of such rights and obligations under this Lease. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or any rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall not take any actions that would cause the Premises (including without limitation, Landlord's fee simple interest in the Premises) to be encumbered in any manner whatsoever, nor take any action that would impair Landlord's fee simple title to the Premises without the prior written consent of Tenant and BOT, which consent may be given or withheld in their respective sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to the Deeds of Trust, this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

**§ 28.16. Beneficiary under the Construction Deed of Trust Further Assurances.** Landlord and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by the Beneficiary under the Construction Deed of Trust for the purpose of implementing the mortgagee-protection provisions contained in this Lease, of allowing that Beneficiary under the Construction Deed of Trust reasonable means to protect or preserve the lien of its Construction Deed of Trust upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Beneficiary under the Construction Deed of Trust. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in

any material respect adversely affect any rights of Landlord under this Lease. In the event Beneficiary under the Construction Deed of Trust exercises its remedy of foreclosure or takes title to Tenant's leasehold estate in the Premises through deed in lieu of foreclosure or any other means, Beneficiary under the Construction Deed of Trust shall have the right to do so without consent of Landlord and, from and after the time Beneficiary under the Construction Deed of Trust takes such title, Landlord shall recognize Beneficiary under the Construction Deed of Trust (and/or its successors and/or assigns) as the Tenant under this Lease.


**§ 28.17. No Merger of Estates.** So long as this Lease is in effect, the fee and leasehold estates to the Premises and each Beneficiary's interests in the Premises shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Landlord, a Beneficiary, any lessee or any third party by purchase or otherwise.

**SIGNATURES ON FOLLOWING PAGE**


**In Witness Whereof**, the parties have executed this Lease to be effective as of the Effective Date.

**"Landlord"**

**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,**  
an Arizona tax levying special facilities district

By:   
Name: Fletcher McQuay  
Its: CHAIRMAN

ATTEST:

By:   
Name: MARK C. IRWIN  
Its: SECRETARY

**"Tenant"**

**BP CITY PARK INVESTORS, LLC,**  
an Arizona limited liability company

By: BP Downtown Investors, LLC, an  
Arizona limited liability company, Member

By: BP Downtown Manager, LLC, an  
Arizona limited liability company, Manager

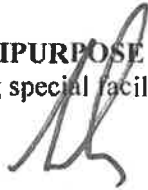
By: Bourn Properties, LLC, an Arizona limited  
liability company, Member

By: \_\_\_\_\_  
Don E. Bourn, Manager


In Witness Whereof, the parties have executed this Lease to be effective as of the Effective Date.

**"Landlord"**

**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT,**  
an Arizona tax levying special facilities district

By:   
Name: Fletcher McCusker  
Its: CHAIRMAN

ATTEST:

By:   
Name: MARK C. IRWIN  
Its: SECRETARY


**"Tenant"**

**BP CITY PARK INVESTORS, LLC,**  
an Arizona limited liability company

By: BP Downtown Investors, LLC, an  
Arizona limited liability company, Member

By: BP Downtown Manager, LLC, an  
Arizona limited liability company, Manager

By: Bourn Properties, LLC, an Arizona limited  
liability company, Member

By:   
Don E. Bourn, Manager

## **LIST OF EXHIBITS**

Exhibit "A"	Legal Description
Exhibit "B"	Net Rent Schedule
Exhibit "C"	Insurance Requirements
Exhibit "D"	Prohibited Uses
Exhibit "E"	Plans and Specifications
Exhibit "F"	Form of Special Warranty Deed
Exhibit "G"	Form of Memorandum Triple Net Government Property Lease Excise Tax



**EXHIBIT A**

**(Legal Description of Premises)**

Block 1 of CITY PARK BLOCK 1 AND BLOCK 2, a subdivision of Pima County, Arizona, according to the map of record in the office of the Pima County Recorder at Document No. 20163580490.

TOGETHER WITH easement for gas line as set forth in Gas Line Easement recorded at Document No. 20122700855.

**EXHIBIT B**

**(Net Rent Schedule)**

<b>From</b>	<b>To</b>	<b>Amount of Rent</b>
Effective Date	Commencement Date	\$1,000
Commencement Date	End of Rental Period	\$250 annually

## EXHIBIT C

### (Insurance Requirements)

Tenant shall maintain or cause to be maintained the following insurance at its sole cost and expense:

(a) Insurance against Casualty to the Premises under a policy or policies covering such risks as are presently included in "special form" (also known as "all risk") coverage, including such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism, malicious mischief and acts of terrorism. Such insurance shall name Landlord as mortgagee and loss payee. Unless otherwise agreed in writing by Landlord, such insurance shall be for the full insurable value of the Premises, with a deductible amount, if any, satisfactory to Landlord. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The term "full insurable value" means one hundred percent (100%) of the actual replacement cost of the Premises (excluding excavation costs and costs of underground flues, pipes, drains and other uninsurable items).

(b) Comprehensive (also known as commercial) general liability insurance on an "occurrence" basis against claims for "personal injury" liability and liability for death, bodily injury and damage to property, products and completed operations, in limits satisfactory to Landlord with respect to any one occurrence and the aggregate of all occurrences during any given annual policy period. Such insurance shall name Landlord as an additional insured.

(c) Workers' compensation insurance for all employees of Tenant in such amount as is required by applicable Law and including employer's liability insurance, if required by Landlord.

(d) During any period of construction upon the Premises, Tenant shall maintain, or cause others to maintain, builder's risk insurance (non-reporting form) of the type customarily carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the Premises.

(e) If at any time any portion of any structure on the Premises is insurable against Casualty by flood and is located in a Special Flood Hazard Area under the Flood Disaster Protection Act of 1973, as amended, a flood insurance policy on the structure and Tenant owned contents in form and amount acceptable to Landlord but in no amount less than the amount sufficient to meet the requirements of applicable Law as such requirements may from time to time be in effect. The flood insurance policy on contents shall be required upon completion of the structure or any unit or component thereof, or as soon thereafter as a flood insurance policy on such contents may be obtained.

(f) Such other and further insurance as may be reasonably required from time to time by Landlord in order to comply with regular requirements and practices of Landlord in similar transactions including, if required by Landlord, boiler and machinery insurance, pollution liability insurance, and wind insurance, so long as any such insurance is generally available at commercially reasonable premiums as determined by Landlord from time to time.

(g) In addition to the foregoing, Tenant shall cause the General Contractor to provide and maintain comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of the General Contractor meeting, respectively, the requirements of Subsections (b) and (c), above.

(h) Each policy of insurance (i) shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and are qualified or authorized by the Laws of the State to assume the risks covered by such policy, (ii) with respect to the insurance described under the preceding subsections (a), (d), (e) and (f), shall have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling Landlord without contribution to collect any and all proceeds payable under such insurance, either as sole payee or as joint payee with Tenant, (iii) shall provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to Landlord, and (iv) shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Tenant which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Tenant shall promptly pay all premiums when due on such insurance and, not less than thirty (30) days prior to the expiration dates of each such policy, Tenant will deliver to Landlord acceptable evidence of insurance, such as a renewal policy or policies marked "premium paid" or other evidence satisfactory to Landlord reflecting that all required insurance is current and in force. Tenant will immediately give Notice to Landlord of any cancellation of, or change in, any insurance policy. Landlord shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (A) the existence, nonexistence, form or legal sufficiency thereof, (B) the solvency of any insurer, or (C) the payment of losses. Tenant may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies, subject to Landlord's prior written approval in each instance as to limits, coverages, forms, deductibles, inception and expiration dates, and cancellation provisions.

## **EXHIBIT D**

### **(Prohibited Uses)**

The following uses are prohibited uses on the Premises:

- (i) betting parlor; gambling casino or gaming activities including but not limited to gambling, electronic gaming machines, slot machines and other devices similar to the aforementioned.
- (ii) funeral parlor; cemetery; crematorium.
- (iii) automobile dealership; boat dealership; body and fender shop; motor vehicle storage facility; boat storage facility.
- (iv) flea market.
- (v) massage parlor; modeling studio; adult bookstore; any establishment primarily engaged in the business of selling, exhibiting or distributing pornographic or obscene materials; a business primarily engaged in displaying live models or dancers, a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration.
- (vi) establishment selling or exhibiting materials or paraphernalia for use with illicit drugs; a so- called "head shop."
- (vii) business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant.
- (viii) central laundry or dry cleaning plant (other than a dry cleaning drop-off facility which does not use dry cleaning fluids or similar chemicals or substances on site in connection with the dry cleaning of clothes).
- (ix) house of worship.
- (x) school (except instructional classes incidental to another allowed use).
- (xi) day care facility, child care facility, preschool or children's nursery.
- (xii) any business that cashes checks or makes short-term or "payday advance" type loans; this is not to exclude the regular business conducted on the Premises or the regular business of any bank or financial institution insured by the

F.D.I.C. or mortgage brokerage firm or other similar business providing long-term, mortgage type loans.

(xiii) any business which creates unreasonably or unusually strong or offensive odors, fumes, emissions or sounds.

**EXHIBIT E**

**(Plans and Specifications)**

*[see attached]*

**CANYON**  
CONSTRUCTION

Printed on Fri Jan 27, 2017 at 02:02 pm MST  
Job #: 16-0311-290 City Park  
40 E Congress  
Tucson Arizona. 85701

# Current Drawings

Drawing No.	Drawing Title	Revision No.	Drawing Date	Received Date	Set
<b>Architectural</b>					
A1.0	ENLARGED SITE PLAN	1		01/06/2017	75% 1/6/17
A2.0	FIRST FLOOR PLAN	1		01/06/2017	75% 1/6/17
A2.1	SECOND FLOOR PLAN	1		01/06/2017	75% 1/6/17
A2.2	THIRD FLOOR PLAN	1		01/06/2017	75% 1/6/17
A2.3	FOURTH FLOOR PLAN	1		01/06/2017	75% 1/6/17
A2.4	FIFTH FLOOR PLAN	1		01/06/2017	75% 1/6/17
A3.0	ROOF PLAN	1		01/06/2017	75% 1/6/17
A5.0	FIRST FLOOR REFLECTED CEILING PLAN	1		01/06/2017	75% 1/6/17
A5.1	SECOND FLOOR REFLECTED CEILING PLAN	1		01/06/2017	75% 1/6/17
A5.2	THIRD/FOURTH FLOOR REFLECTED CEILING PLAN	1		01/06/2017	75% 1/6/17
A5.3	FIFTH FLOOR REFLECTED CEILING PLAN	1		01/06/2017	75% 1/6/17
A5.4	FIFTH FLOOR REFLECTED CEILING PLAN	0		01/06/2017	75% 1/6/17
A6.0	BUILDING SECTION	1		01/06/2017	75% 1/6/17
A6.1	BUILDING SECTION	1		01/06/2017	75% 1/6/17
A6.2	WALL SECTIONS	1		01/06/2017	75% 1/6/17
A6.3	WALL SECTIONS	1		01/06/2017	75% 1/6/17
A6.4	DETAILS	1		01/06/2017	75% 1/6/17
A6.5	DETAILS	0		01/06/2017	75% 1/6/17
A6.6	DETAILS	0		01/06/2017	75% 1/6/17
A7.0	EXTERIOR ELEVATIONS	1		01/06/2017	75% 1/6/17
A7.1	EXTERIOR ELEVATIONS	1		01/06/2017	75% 1/6/17
A8.0	ROOM FINISH SCHEDULE & DOOR SCHEDULE	1		01/06/2017	75% 1/6/17
A8.1	WALL TYPES	1		01/06/2017	75% 1/6/17
A9.0	ENLARGED PLANS & INTERIOR ELEVATIONS	2		01/06/2017	75% 1/6/17
A9.1	NORTH STAIR SECTIONS	0		01/06/2017	75% 1/6/17
A9.2	EAST STAIR SECTIONS	1		01/06/2017	75% 1/6/17
A9.3	SOUTH STAIR SECTIONS	1		01/06/2017	75% 1/6/17
A9.4	ELEVATORS & WEST STAIR SECTIONS	1		01/06/2017	75% 1/6/17
A10.1	WINDOW ELEVATIONS	1		01/06/2017	75% 1/6/17
A10.2	WINDOW ELEVATION 2	1		01/06/2017	75% 1/6/17
<b>Civil</b>					
1 OF 11	COVER SHEET	1		01/06/2017	75% 1/6/17
2 OF 11	NOTES	1		01/06/2017	75% 1/6/17
3 OF 11	SITE PLAN	1		01/06/2017	75% 1/6/17
4 OF 11	GRADING PLAN	1		01/06/2017	75% 1/6/17
5 OF 11	UTILITIES AND EASEMENTS PLAN	1		01/06/2017	75% 1/6/17
6 OF 11	DEMOLITION PLAN	1		01/06/2017	75% 1/6/17
<b>Electrical</b>					



CANYON

Drawing No.	Drawing Title	Revision No.	Drawing Date	Received Date	Set
E1.1	POWER & SYSTEMS PLAN 1ST FLOOR	1		01/06/2017	75% 1/6/17
E1.2	POWER & SYSTEMS PLAN 2ND FLOOR	1		01/06/2017	75% 1/6/17
E1.3	POWER & SYSTEMS PLAN 3RD FLOOR	1		01/06/2017	75% 1/6/17
E1.4	POWER & SYSTEMS PLAN 4TH FLOOR	1		01/06/2017	75% 1/6/17
E1.5	POWER & SYSTEMS PLAN 5TH FLOOR	1		01/06/2017	75% 1/6/17
E2.1	LIGHTING PLAN 1ST FLOOR	1		01/06/2017	75% 1/6/17
E2.2	LIGHTING PLAN 2ND FLOOR	1		01/06/2017	75% 1/6/17
E2.3	LIGHTING PLAN 3RD FLOOR	1		01/06/2017	75% 1/6/17
E2.4	LIGHTING PLAN 4TH FLOOR	1		01/06/2017	75% 1/6/17
E2.5	LIGHTING PLAN 5TH FLOOR	1		01/06/2017	75% 1/6/17
E3.1	ELECTRICAL HVAC PLAN 1ST FLOOR	1		01/06/2017	75% 1/6/17
E3.2	ELECTRICAL HVAC PLAN 2ND FLOOR	1		01/06/2017	75% 1/6/17
E3.3	ELECTRICAL HVAC PLAN 3RD FLOOR	1		01/06/2017	75% 1/6/17
E3.4	ELECTRICAL HVAC PLAN 4TH FLOOR	1		01/06/2017	75% 1/6/17
E3.5	ELECTRICAL HVAC PLAN 5TH FLOOR	1		01/06/2017	75% 1/6/17
E3.6	ELECTRICAL HVAC PLAN ROOF	1		01/06/2017	75% 1/6/17
E4.1	FIRE ALARM PLAN 1ST FLOOR	1		01/06/2017	75% 1/6/17
E4.2	FIRE ALARM PLAN 2ND FLOOR	1		01/06/2017	75% 1/6/17
E4.3	FIRE ALARM PLAN 3RD FLOOR	1		01/06/2017	75% 1/6/17
E4.4	FIRE ALARM PLAN 4TH FLOOR	1		01/06/2017	75% 1/6/17
E4.5	FIRE ALARM PLAN 5TH FLOOR	1		01/06/2017	75% 1/6/17
E5.0	ONE-LINE DIAGRAM & TTB CONDUIT DIAGRAM	1		01/06/2017	75% 1/6/17
E6.0	PANEL SCHEDULES & LIGHTING FIXTURE SCHEDULE	1		01/06/2017	75% 1/6/17
E7.0	ELECTRICAL SPECIFICATIONS NOTES, & SYMBOLS	1		01/06/2017	75% 1/6/17
<b>General</b>					
G1.0	GENERAL NOTES, INDEX	2		01/06/2017	75% 1/6/17
G1.1	LIFE SAFETY PLANS	1		01/06/2017	75% 1/6/17
<b>Landscape</b>					
7	SITE DEVELOPMENT PLAN for CITY PARK MIXED USE HARDSCAPE PLAN	0	09/29/2016		City Park Shell 09/29/16
7 OF 11	HARDSCAPE PLAN	1		01/06/2017	75% 1/6/17
8 OF 11	LANDSCAPE PLAN	1		01/06/2017	75% 1/6/17
9 OF 11	IRRIGATION PLAN	1		01/06/2017	75% 1/6/17
10 OF 11	HARDSCAPE DETAILS	1		01/06/2017	75% 1/6/17
11 OF 11	PLANTING & IRRIGATION PLAN	1		01/06/2017	75% 1/6/17
<b>Mechanical</b>					
M1.0	FIRST FLOOR MECHANICAL PLAN	1		01/06/2017	75% 1/6/17
M2.0	SECOND FLOOR MECHANICAL PLAN	1		01/06/2017	75% 1/6/17
M3.0	THIRD FLOOR MECHANICAL PLAN	1		01/06/2017	75% 1/6/17
M4.0	FOURTH FLOOR MECHANICAL PLAN	1		01/06/2017	75% 1/6/17
M5.0	FIFTH FLOOR MECHANICAL PLAN	1		01/06/2017	75% 1/6/17
M6.0	ROOF MECHANICAL PLAN	1		01/06/2017	75% 1/6/17
M7.0	MECHANICAL SCHEDULES AND NOTES	1		01/06/2017	75% 1/6/17
M7.1	MECHANICAL DETAILS	0		01/06/2017	75% 1/6/17

**CANYON**  
 9 3 1 1 2 3 4 5 6 7 8 9 10 11 12

Printed on Fri Jan 27, 2017 at 02:02 pm MST  
 Job #: 16-0311-290 City Park  
 40 E Congress  
 Tucson Arizona. 85701

Drawing No.	Drawing Title	Revision No.	Drawing Date	Received Date	Set
MPT1.0	MECHANICAL AND PLUMBING SPECIFICATIONS	1	01/06/2017	75% 1/6/17	
<b>Plumbing</b>					
P0.0	PLUMBING NOTES	1	01/06/2017	75% 1/6/17	
P1.0	FIRST FLOOR PLUMBING PLAN	2	01/06/2017	75% 1/6/17	
P2.0	SECOND FLOOR PLUMBING PLAN	1	01/06/2017	75% 1/6/17	
P3.0	THIRD FLOOR PLUMBING PLAN	1	01/06/2017	75% 1/6/17	
P4.0	FOURTH FLOOR PLUMBING PLAN	1	01/06/2017	75% 1/6/17	
P5.0	FIFTH FLOOR PLUMBING PLAN	1	01/06/2017	75% 1/6/17	
P6.0	ROOF PLUMBING PLAN	1	01/06/2017	75% 1/6/17	
P7.0	PLUMBING SCHEDULES	1	01/06/2017	75% 1/6/17	
P7.1	PLUMBING SCHEDULES	1	01/06/2017	75% 1/6/17	
<b>Structural</b>					
S1.0	GENERAL STRUCTURAL NOTES	1	01/06/2017	75% 1/6/17	
S1.1	GENERAL STRUCTURAL NOTES	1	01/06/2017	75% 1/6/17	
S1.2	GENERAL STRUCTURAL NOTES	1	01/06/2017	75% 1/6/17	
S1.3	TYPICAL DETAILS	1	01/06/2017	75% 1/6/17	
S1.4	TYPICAL DETAILS	1	01/06/2017	75% 1/6/17	
S1.5	TYPICAL DETAILS	1	01/06/2017	75% 1/6/17	
S1.6	TYPICAL DETAILS	1	01/06/2017	75% 1/6/17	
S1.7	TYPICAL DETAILS	1	01/06/2017	75% 1/6/17	
S1.8	TYPICAL SCHEDULES	1	01/06/2017	75% 1/6/17	
S2.0	FOUNDATION PLAN	1	01/06/2017	75% 1/6/17	
S3.0	SECOND FLOOR FRAMING PLAN	2	01/06/2017	75% 1/6/17	
S3.1	THIRD FLOOR FRAMING PLAN	2	01/06/2017	75% 1/6/17	
S3.2	FOURTH FLOOR FRAMING PLAN	2	01/06/2017	75% 1/6/17	
S3.3	FIFTH FLOOR FRAMING PLAN	2	01/06/2017	75% 1/6/17	
S3.4	ROOF FRAMING PLAN	2	01/06/2017	75% 1/6/17	
S3.5	TRASH ROOM FRAMING PLAN	1	01/06/2017	75% 1/6/17	
S3.6	SHEAR WALL ELEVATIONS	0	01/06/2017	75% 1/6/17	
S3.7	SHEAR WALL SECTIONS	0	01/06/2017	75% 1/6/17	
S3.8	SHEAR WALL SECTIONS	0	01/06/2017	75% 1/6/17	
S3.9	SHEAR WALL DETAILS	0	01/06/2017	75% 1/6/17	
S3.10	STAIR FRAMING PLANS	0	01/06/2017	75% 1/6/17	
S4.0	FOUNDATION DETAILS	0	01/06/2017	75% 1/6/17	
S4.1	FOUNDATION DETAILS	0	01/06/2017	75% 1/6/17	
S5.0	CONCRETE FRAMING DETAILS	0	01/06/2017	75% 1/6/17	
S6.0	FRAMING DETAILS	0	01/06/2017	75% 1/6/17	
S6.1	FRAMING DETAILS	0	01/06/2017	75% 1/6/17	
S6.2	FRAMING DETAILS	0	01/06/2017	75% 1/6/17	
S6.3	FRAMING DETAILS	0	01/06/2017	75% 1/6/17	

## EXHIBIT F

### (Form of Special Warranty Deed)

**When recorded mail to:**

GinaMarie K. Spencer, Esq.  
Mendelsohn, Oseran & Spencer, PLC  
2525 E. Broadway #201  
Tucson, AZ 85716

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### SPECIAL WARRANTY DEED

For the consideration of TEN AND NO/100 (\$10.00) DOLLARS, and other valuable consideration, RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing district of the State of Arizona, the GRANTOR, does hereby convey to BP CITY PARK INVESTORS, LLC, an Arizona limited liability company, the GRANTEE, the real property situated in Pima County, Arizona, legally described on Exhibit "1", attached hereto and by reference incorporated herein; subject only to those matters described on Exhibit "2" attached hereto and by referenced incorporated herein. The Grantor hereby binds itself and its successors to warrant and defend the title as against all acts of the Grantor herein, and no other, subject to the matters set forth above.

*Exempt from filing Affidavit of Property Value pursuant to A.R.S. Section 11-1134.A3*

DATED this \_\_\_\_ day of \_\_\_\_\_.

GRANTOR:

RIO NUEVO MULTIPURPOSE FACILITIES  
DISTRICT, a special taxing district of the State of  
Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA       )  
                                  ) ss.  
County of Pima        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of Rio  
Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona,

[SEAL]

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

**EXHIBIT "1"**

**Legal Description to Special Warranty Deed**

Block 1 of CITY PARK BLOCK 1 AND BLOCK 2, a subdivision of Pima County, Arizona, according to the map of record in the office of the Pima County Recorder at Document No. 20163580490.

TOGETHER WITH easement for gas line as set forth in Gas Line Easement recorded at Document No. 20122700855.

**EXHIBIT "2"**

## EXHIBIT G

### (Form of Memorandum)

#### WHEN RECORDED, RETURN TO:

GinaMarie K. Spencer, Esq.  
Mendelsohn Oseran & Spencer, PLC  
2525 E. Broadway Blvd., Suite 201  
Tucson, Arizona 85716

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#### MEMORANDUM OF TRIPLE NET GOVERNMENT PROPERTY LEASE EXCISE TAX

THIS MEMORANDUM OF TRIPLE NET GOVERNMENT PROPERTY LEASE EXCISE TAX ("Memorandum") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, a special taxing district of the State of Arizona ("Landlord"), and BP CITY PARK INVESTORS, LLC, an Arizona limited liability company ("Tenant").

1. The Landlord and Tenant have entered into that certain TRIPLE NET GOVERNMENT PROPERTY LEASE EXCISE TAX, dated \_\_\_\_\_, 2017 ("Lease"), whereby the Landlord leases to Tenant that real property and improvements more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property"). Capitalized terms used in this Memorandum shall have the meanings ascribed to them parenthetically or in the Lease.

2. This Memorandum is being recorded to give constructive notice to all persons dealing with the Property that the Landlord leases to Tenant the Property, and that the Landlord and Tenant consider the Lease to be a binding agreement between the Landlord and Tenant regarding the Property. In accordance with A.R.S. §42-6202.C, (i) Landlord and Tenant are parties to the Lease; (ii) the leased property is legally described on the attached Exhibit "A"; (iii) the lease term commenced on \_\_\_\_\_, 2017, and shall expire on the twenty-fifth anniversary after the issuance of a certificate of occupancy for the improvements to-be constructed on the leased property ; (iii) the Tenant does not have the option to renew the Lease, but has the right to re-acquire the Property at the end of the Lease term, all in accordance with the terms of the Lease.

3. The Lease contains certain protections in favor of Beneficiaries under Deeds of Trusts, including without limitation, the following provisions:

**Section 16.8 Deeds of Trust Default Protections.**

Notwithstanding anything to the contrary in this Lease, until the time, if any, that the Construction Deed of Trust shall be satisfied and released of record or the Beneficiary under the Construction Deed of Trust shall give to Landlord written notice that said Construction Deed of Trust has been satisfied, each of the following shall apply.

**A. Consent of Beneficiary under Construction Deed of Trust.** No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any Beneficiary under the Construction Deed of Trust without its prior written consent.

**B. Notice to Beneficiary under Construction Deed of Trust.** If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Beneficiary under the Construction Deed of Trust at the address designated by the Beneficiary under the Construction Deed of Trust. Such copies of Notices shall be sent by registered or certified mail, return receipt requested, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Beneficiary under the Construction Deed of Trust. No Notice given by Landlord to Tenant shall be binding upon the Beneficiary under the Construction Deed of Trust unless a copy of the Notice shall be given to the Beneficiary under the Construction Deed of Trust pursuant to this subsection. In the case of an assignment of a Beneficiary under the Construction Deed of Trust or change in address of a Beneficiary under the Construction Deed of Trust, the assignee or Beneficiary under the Construction Deed of Trust, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

**C. Beneficiary under the Construction Deed of Trust Cure Rights.** Landlord shall provide written notice of any Event of Default under this Lease to Beneficiary under the Construction Deed of Trust and Beneficiary under the Construction Deed of Trust shall have the cure rights set forth in this Section 16.8.C. If Tenant fails to cure an Event of Default within the applicable cure period, then the Beneficiary under the Construction Deed of Trust shall have the right for a period of forty-five (45) days after the later of (i) written notice to the Beneficiary under the Construction Deed of Trust that Tenant has so failed to cure, and (ii) the end of the applicable cure period to perform any term, covenant, or condition and to remedy any Event of Default by Tenant hereunder or such longer period as the Beneficiary under the Construction Deed of Trust may reasonably require to effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant. Landlord agrees that the Beneficiary under the Construction Deed of Trust shall not be required to pay default interest to cure any payments defaults by Tenant. The Beneficiary under



the Construction Deed of Trust shall have the right to enter upon the Premises to give such performance.

**D. Prosecution of Foreclosure of Other Proceedings.** In case of a Non-Monetary Default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Beneficiary under the Construction Deed of Trust without taking possession of the Premises, in such Beneficiary under the Construction Deed of Trust's reasonable opinion, or if such default is not susceptible of being cured by the Beneficiary under the Construction Deed of Trust, then Landlord shall not serve a notice of lease termination pursuant to Section 16.2, if and so long as:

(i) the Beneficiary under the Construction Deed of Trust shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure such Events of Default as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Beneficiary under the Construction Deed of Trust from obtaining such possession); or

(ii) the Beneficiary under the Construction Deed of Trust shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Beneficiary under the Construction Deed of Trust from obtaining such possession).

**E.** The Beneficiary under the Construction Deed of Trust shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Clause (i) above, or to continue to prosecute foreclosure proceedings pursuant to Clause (ii) above, if and when such Event of Default has been cured. Notwithstanding anything in this Lease to the contrary, if Beneficiary, its nominee, or any successor for Beneficiary or Beneficiary's nominee (including any purchaser by foreclosure sale, trustee's sale, or deed in lieu of foreclosure) succeeds to Tenant's interest hereunder, then (i) in no event shall such successor Tenant incur liability for the acts of the prior Tenant; it being understood and agreed that the successor Tenant shall only be liable for its own acts from and after the succession of Tenant's leasehold estate hereunder, and (ii) an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

**F. Extension of Foreclosure of Other Proceedings.** If any Beneficiary under the Construction Deed of Trust is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof

by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in Section 16.8.D (i) and (ii) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

**G. Additional Consent of Beneficiary under Construction Deed of Trust.** No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder shall be effective without the prior written consent of any Beneficiary under the Construction Deed of Trust.

**H. Rights of Beneficiary under Subordinated Deed of Trust.** At such time, if any, that the Construction Deed of Trust has been satisfied and released of record, and if at such time the Subordinated Deed of Trust remains of record, the secured lender protections set forth in this Section 16.8 shall apply to the Beneficiary under the Subordinated Deed of Trust.

4. The Lease (Section 16.9) further grants the most senior Beneficiary under the Deeds of Trust the right, subject to the satisfaction of certain conditions precedent, to a new lease, subject to applicable law, on substantially the same terms and conditions as the Lease, and provides that such new lease shall have the same priority as the Lease with respect of any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee title to the Property.

5. This Memorandum is not a complete summary of the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control.

6. This Memorandum may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first set forth above.

**[SIGNATURES ON FOLLOWING PAGES]**

LANDLORD:

**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, a special taxing district of the  
State of Arizona

By: \_\_\_\_\_  
Fletcher McCusker, Chairman

ATTEST:

By: \_\_\_\_\_  
Mark Irvin, Secretary

STATE of ARIZONA)

County of PIMA ) ss.  
)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017  
by Fletcher McCusker, Chairman of Rio Nuevo Multipurpose Facilities District, a special taxing  
district of the State of Arizona.

My Commission Expires:  
\_\_\_\_\_

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

BP CITY PARK INVESTORS, LLC, an Arizona limited liability company

By: BP Downtown Investors, LLC, an Arizona limited liability company, Member

By: BP Downtown Manager, LLC, an Arizona limited liability company, Manager

By: Bourn Properties, LLC, an Arizona limited liability company, Member

By: \_\_\_\_\_  
Don E. Bourn, Manager

STATE OF ARIZONA       )  
                                      ) ss.  
County of Pima         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Don E. Bourn, Manager of Bourn Properties, LLC, an Arizona limited liability company, Member of BP Downtown Manager, LLC, an Arizona limited liability company, Manager of BP Downtown Investors, LLC, an Arizona limited liability company, Member of BP City Park Investors, LLC, an Arizona limited liability company, for and on behalf of the company.

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

My commission expires:  
\_\_\_\_\_

EXHIBIT A  
TO MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

Block 1 of CITY PARK BLOCK 1 AND BLOCK 2, a subdivision of Pima County, Arizona, according to the map of record in the office of the Pima County Recorder at Document No. 20163580490.

TOGETHER WITH easement for gas line as set forth in Gas Line Easement recorded at Document No. 20122700855.