

FIRST AMENDMENT TO SALE AGREEMENT AND ESCROW INSTRUCTIONS

Amendment Date: August ^{25th}, 2015

Seller: 5 North 5th Hotel, LLC

Buyer: Rio Nuevo Multipurpose Facilities District

Contract: Sale Agreement and Escrow Instructions dated September 12, 2014, between Seller and Buyer

Escrow Agent: Title Security Agency, as successor to First American Title Insurance Company

Escrow: Title Security Escrow No. 87-5651629-JS

Buyer and Seller have entered into the Contract, and desire to amend the Contract according to this First Amendment to Sale Agreement and Escrow Instructions ("Amendment").

1. Buyer and Seller desire to update and amend Section 1.1(a) of the Contract to accurately reflect the legal condition of the Parcel and the Property as of the date of this Amendment. Notwithstanding anything to the contrary in the Contract, Seller represents and warrants as of the date of this Amendment that: (a) Seller is the owner of the entire Parcel, and (b) Seller has subjected a portion of the Parcel to that certain Condominium Declaration for AC Hotel Tucson Condominium, recorded at Sequence No. 2015-2370544 in the official records of the County Recorder of Pima County, Arizona, and that Condominium Map for AC Hotel Tucson Condominium recorded at Seq# 2015-2370543, in the official records of the County Recorder of Pima County, Arizona (collectively, the "Declaration"), whereby the portion of the Parcel described in the Declaration has been submitted to a condominium pursuant to the Arizona Condominium Act, A.R.S. Section 33-1201, et. seq. Buyer and Seller agree that the Declaration constitutes the "Condo Documents" under the Contract.

2. Buyer and Seller agree that the "Preliminary Plat" and Exhibit "A" attached to the Contract have been updated and replaced by, and all references in the Contract to "Preliminary Plat" and Exhibit "A" shall be deemed to refer to, the condominium plat attached as part of the Declaration. In accordance with the last sentence of Section 1.1(a) of the Contract, the Declaration (including the condominium plat attached thereto) has received all applicable City approvals, and Seller and Buyer hereby agree that the Property is legally described as follows:

Unit 2, AC HOTEL TUCSON CONDOMINIUM, according to Condominium Declaration for AC Hotel Tucson Condominium recorded at Sequence No. 2015-2370544, in the official records of the County Recorder of Pima County, Arizona, and Condominium Map for AC Hotel Tucson Condominium recorded at Seq# 2015-2370543, in the official records of the County Recorder of Pima County, Arizona;

TOGETHER with an undivided interest in the common elements as set forth in said Declaration and the condominium plat attached thereto.

3. Prior to or concurrent with the Amendment Date, Buyer has deposited with Escrow Agent the Additional Earnest Money. The last sentence of Section 2.1(b) is hereby deleted and the following is inserted in its place: "Upon Buyer's deposit of the Additional Earnest Money, all Earnest Money will be non-refundable except as provided in Sections 3.2(c) (New Title Matters), 4.3 (Representation Breach), 6.2 (Seller Default), 6.6 (Condemnation), and except with respect to the satisfaction of the Construction Contingency. For the purposes of this Contract, the term "Construction Contingency" shall mean the completion of the Seller's improvements to the Property, in accordance with the terms of the Construction Plans, as evidenced by the issuance of a certificate of occupancy or similar document from the City evidencing that the Property has been substantially completed.

4. Section 2.4 of the Contract is hereby amended and restated in its entirety as follows:

2.4 Closing Date. The completion of the purchase and sale transaction described in this Agreement ("Close of Escrow") will occur within 15 business days following written notice from Seller and Buyer that Seller has satisfied the Construction Contingency ("Closing Date"), unless extended or shortened by mutual consent of Buyer and Seller. Notwithstanding the foregoing, if Seller has not satisfied the Construction Contingency on or before September 12, 2017, then (i) Buyer and Seller may mutually agree in writing to waive the Construction Contingency, whereupon the Closing Date shall occur 15 business days after such written waiver by Buyer and Seller, or (ii) either Buyer or Seller may terminate this Agreement by providing written notice to Escrow Agent and the other party. Upon receipt of such termination notice from either party, the Contract shall terminate, Escrow Agent shall deliver to Buyer the Earnest Money, and neither party will have any further rights or obligations hereunder (except those that expressly survive the termination of this Agreement).

5. Seller hereby confirms that, as of the Amendment Date, the Seller contingencies described in Section 2.5 of the Contract have been satisfied in full (or, in the case of the Financing, will be satisfied in full concurrently with the execution of this Amendment). The last two (2) sentences of Section 2.5 are deleted in their entirety.

6. Buyer acknowledges and confirms that each of Buyer's "Contingency Periods" (as defined in Section 3.3 of the Contract) have been satisfied. Without limiting the foregoing, Buyer has reviewed and approved the Due Diligence Documents in the forms and content described on Schedule 1 attached to this Amendment. Buyer further acknowledges and confirms that all other contingencies described in Article 3 of the Contract have been satisfied or are hereby waived, except for (a) Seller's delivery to Buyer of the materials described in the last sentence of Section 3.1 of the Contract, and (b) Buyer's right to object to new title matters as provided in Section 3.2(c) of the Contract. Nothing in this Section shall modify Buyer's continued rights under Section 3.3(c) of the Contract, provided that the last sentence of Section

3.3(c) is hereby deleted, and the following is inserted in its place: "If Buyer gives notice to Seller of any deviation from the Construction Plans or of any construction deficiencies that materially impact the quality, safety or integrity of the Property at any time prior to receipt of the Certificate of Occupancy, (i) Seller shall promptly forward such notice to the City and Seller's lender providing the Financing ("Lender"), (ii) Seller, Buyer, City and Lender shall promptly meet to determine the scope and extent of such deviations and deficiencies, and to attempt to agree upon the appropriate corrective measures to remedy such deviations and deficiencies (as agreed upon by Seller, Buyer, City and Lender, the "Corrective Measures"), and (iii) Seller shall be required to perform the Corrective Measures prior to the Close of Escrow."

7. The last sentence of Section 3.2(a) is hereby deleted and the following is inserted in its place: "Except for consensual liens of Seller applicable to the Property, which Seller agrees to release at the Close of Escrow, Seller will have no obligation or duty to cure the Title Objections or to incur any expense in curing the Title Objections; notwithstanding the foregoing, Buyer acknowledges that Lender's lien securing Seller's Financing will, following the Closing Date, continue to encumber Seller's leasehold and repurchase rights under the Lease."

8. Section 4.1 of the Contract has hereby supplemented as follows: Seller will convey the Property to Buyer also subject to the Lease (and Lender's lien thereon).

9. In connection with Seller's Financing, Buyer acknowledges that Lender will be collaterally assigned Seller's rights under the Contract. Seller and Buyer hereby confirm that the representations and warranties contained in the Contract, including Section 4.2 thereof, are made solely by the named Seller executing the Contract (and not its successors and assigns), and only the named Seller executing the Contract shall have liability therefor, notwithstanding any exercise by Lender of its rights under any documents evidencing or securing the Financing.

10. Section 4.2 is amended to include subsection 4.2(i) as set forth below and to renumber the Buyer's representations.

4.2(i) Seller represents that the Property shall contain not less than 195 parking spaces at the Close of Escrow.

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

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

11. The Lease attached as Exhibit "C" to the Contract, and the Memorandum of Lease attached as Exhibit "D" to the Contract, are hereby deleted, and the Lease attached hereto as Exhibit "C", and the Memorandum of Lease and Purchase Right attached hereto as Exhibit "D", are inserted in its place.

12. Any capitalized terms not otherwise defined in this Amendment shall have the meanings ascribed in the Contract. Except as expressly modified by this Amendment, the terms

and provisions of the Contract shall remain in full force and effect. To the extent of any conflict or inconsistency of any term or provision of this Amendment and any term or provision of the Contract, the term or provision of this Amendment shall control. This Amendment may be executed by facsimile and in any number of counterparts, each of which when executed and delivered will be deemed to be an original, but all of which together will constitute one binding contract and instrument. Reference to the Contract shall constitute a reference to the Contract, as amended by this Amendment.

[SIGNATURES FOLLOWING PAGE]

Dated as of the Amendment Date.

Seller:

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

By: 
Its manager

Buyer:

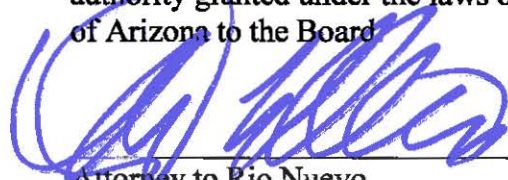
Rio Nuevo Multipurpose Facilities District,
a political subdivision of the State of
Arizona

By: 
Its Secretary

ATTEST:


Clerk

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


Attorney to Rio Nuevo

SCHEDULE 1

Approved Due Diligence Documents

Buyer confirms and agrees that, as of the Amendment Date, Buyer has approved the following Due Diligence Documents:

1. Title Report in the form of that certain title commitment issued by Escrow Agent as agent for First American Title Insurance Company, Commitment No. 99-5651629, effective as of July 20, 2015, 2015, together with any accompanying proforma endorsements;
2. ALTA/ACSM Land Title Survey prepared by Polaris Land Surveying, LLC, dated August 27, 2015 as Job No. 13133/2015;
3. Phase I Environment Site Assessment prepared by Western Technologies, Inc., dated November 21, 2014, as Project No. 2984XC130;
4. Geotechnical Evaluation prepared by Western Technologies, Inc., job no. 2923JH069, dated January 27, 2015;
5. City of Tucson Historic Preservation Office Preliminary Clearance Report for Downtown Hotel (2014-0965), dated June 29, 2015, countersigned by the Arizona State Historic Preservation Office on July 2, 2015; Preliminary Results of Data Recovery on the Eastern Half of Historic Block 92, Tucson, Pima County, Arizona, prepared by Desert Archeology, Inc., dated June 30, 2015;
6. Condo Documents (as defined in the Amendment);
7. Construction Plans for AC Hotel Tucson, Swaim Architects Ltd. job no 1317 and FORS architecture and interiors job no. 1449; and
8. plans submitted to the City

EXHIBIT "C"
TO
SALE AGREEMENT AND
ESCROW INSTRUCTIONS

(Lease and Purchase Right Agreement)

LEASE AND PURCHASE RIGHT AGREEMENT

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

BACKGROUND

Landlord has, concurrent herewith, acquired the Premises (as defined below) from Tenant. Landlord desires to lease the Premises to Tenant, and Tenant desires to lease such property from Landlord, in accordance with the terms and conditions of this Lease. The "Premises" consist of a certain parking garage and related improvements, including any alterations thereof or subsequent improvements thereto (specifically including the Tenant's Alterations, as defined below), which are located on that parcel of real property having a street address of _____, Tucson, Arizona 85701, and which is legally described as Unit 2, according to the Condominium Declaration for AC Hotel Tucson Condominium, together with the condominium plat attached thereto, recorded at Sequence No. 2015-2370544, official records of Pima County, Arizona ("Declaration").

1. BASIC LEASE PROVISIONS

1.1 Terms.

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

2. PREMISES

2.1 Premises. Landlord leases and rents to Tenant, and Tenant accepts from Landlord,
05/15/15

subject to and with the benefit of the terms and provisions of this Lease, the Premises.

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

3. TERM

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

3.2 Option to Extend. Tenant is granted the right to extend the term of this Lease for four (4) periods of five (5) years (each, an "Option Period") on the terms and conditions set forth herein; provided, however, that such right to extend for the Option Period (the "Option") may be exercised only if Tenant is not in default under this Lease. The words "Lease Term" or "Term" as used in this Lease shall mean the Initial Term of this Lease as may be extended by Tenant pursuant to this Section. To exercise the Option described in this Section, Tenant shall notify Landlord in writing no later than ninety (90) calendar days prior to the expiration of the Initial Term or prior Option Period. If Tenant exercises its Option as provided herein, all of the terms and conditions of this Lease shall apply during the Option Period, including but not limited to Tenant's obligation to pay those additional obligations set forth in Section 4.3 below and other charges and expenses provided for in the Lease; provided that Minimum Rent during the particular Option Period shall be determined in accordance with Section 4.2. At Landlord's request, prior to the commencement of an Option Period, Tenant shall execute, acknowledge and deliver to Landlord an Amendment to Lease evidencing Tenant's exercise of its Option right and setting forth the commencement and expiration dates of the Option Period and term of the Lease, and the Minimum Rent payable during the Option Period.

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

4. RENT

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

4.2 Rent During Extension Term. The Minimum Rent payable by Tenant under this Lease for each month during any year within the first Option Period will equal [\$ _____] (which amount is the product of \$100.00 multiplied by the number of parking spaces existing within the Premises from time to time, as determined by Tenant's site plan, which number shall not be less than 195 or more than 205). During each of the remaining three (3) Option Periods, Minimum Rent shall equal the "Fair Rental Value" of the Premises at the inception of the Option Period, as determined below. Concurrent with Tenant's delivery of written notice of its exercise of the second, third and fourth Options (as applicable), Tenant shall deliver to Landlord its determination of the Fair Rental Value of the Premises. If Landlord disputes Tenant's determination of Fair Rental Value, Landlord shall propose its own estimate of the Fair Rental Value. If, within ten days following Landlord's submission, the parties cannot agree upon the Fair Rental Value, the parties shall jointly retain an MAI-certified real estate appraiser, whose sole function shall be to determine which of Landlord's or Tenant's estimate of Fair Rental Value is more reasonable, and the appraiser's determination shall be binding and shall constitute the Minimum Rent during such Option Period. Minimum Rent during each Option Period will continue to be paid in equal monthly installments on or before the first day of each calendar month.

4.3 Additional Obligations. This Lease is intended to be and shall be construed as a "net lease," pursuant to which Landlord shall receive the Minimum Rent provided in this section without reduction or offset for any other charge or expense, and free and clear of all taxes, impositions, charges or expenses of any nature whatsoever, except as may expressly be the obligation of Landlord hereunder. Tenant shall pay any sales and rental taxes (if applicable), parcel maintenance and repair costs and other obligations described in this Lease, including, without limitation, those described in Sections 5.3, 6, 7, 8 and 9, and Tenant's insurance requirements described in Section 14, which shall be paid by Tenant with respect to and during the Term. Tenant shall comply with the Declaration to the extent applicable to Tenant, the Premises, and Tenant's use and occupancy thereof. To the extent that any provision of the Declaration, including as set forth in Articles 8, 9 and 10 thereof, expressly conflicts with the terms of Sections 14 (insurance and casualty) and 17 (eminent domain), Tenant shall comply with the provisions most protective of Landlord. Tenant agrees to and shall pay the following costs and charges directly to the appropriate party and before past due or delinquent: all utilities, trash or refuse collection, security, insurance premiums, license, janitorial, maintenance (interior and exterior), costs of daily operation, condominium association assessments or charges, and any other charges of any kind whatsoever incurred by Tenant with respect to the Premises or Tenant's lease of the Premises, except as otherwise expressly set forth in this Lease.

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

(b) **Costs.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent, unless otherwise specifically provided for in this Lease. If Tenant shall fail to pay any sum of money owed to any party other than Landlord for which it is liable hereunder, or if Tenant shall fail to perform any other act on its part to be performed

hereunder, and such failure shall continue for thirty (30) days after written notice thereof by Landlord. Landlord may, without waiving such default or any other right or remedy, but shall not be obligated to, make any such payment or perform any such other act to be made or performed by Tenant. All sums so paid by Landlord, together with interest thereon at the Default Rate of Interest (as set forth in Section 15.2(b)) from the date of expenditure by Landlord, shall be payable to Landlord within ten (10) days after written demand; provided, however, that Tenant shall have the right to contest any amount owing to a third party so long as Tenant has adequately protected Landlord against loss, damage or liens as may be reasonably determined by Landlord.

5. USE

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

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

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

6. MAINTENANCE OF PREMISES

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

6.2 Failure to Maintain by Tenant. If Tenant fails to keep and preserve the Premises as set forth in Section 6.1, and after which Landlord has given Tenant notice of such failure, Landlord may, at its option, put or cause the same to be put in the condition and state of repair agreed upon, and in such case, upon receipt of written statements and copies of invoices from Landlord's contractors and/or vendors, Tenant shall promptly pay the entire cost thereof, together with an administrative and mobilization expense not to exceed 15% of all such costs. Landlord shall

have the right, without liability, to enter the Premises for the purpose of making such repairs upon the failure of Tenant to do so.

7. UTILITIES AND SERVICES

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

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

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

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

10. ALTERATIONS

10.1 Alterations by Tenant. Tenant shall not make any material alterations, additions or improvements in or to the Premises costing in excess of \$100,000 without the prior written consent of Landlord, in its reasonable discretion. Landlord shall approve or disapprove of Tenant's plans within twenty-five (25) days of their submittal to Landlord by Tenant. Any such alterations, additions, or improvements (collectively, "Tenant's Alterations") shall be made at Tenant's sole cost and expense and shall be completed expeditiously and in compliance with all current and future laws, statutes, rules, ordinances, regulations and stipulations, including, without limitation, the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.) (the "ADA"). Tenant, at its sole cost and expense, shall secure all governmental permits, approvals or authorizations required in connection with any such work and shall defend, indemnify and hold Landlord harmless for, from and against any and all liability, cost, damages (including any damage to the Premises), expenses (including reasonable attorneys' fees) and any and all liens resulting therefrom. On the last day of the Term of this Lease all alterations, additions and improvements, except trade fixtures, appliances, and equipment which are not or do not become a part of the Premises shall immediately become the property of Landlord (and, upon the purchase of the Premises under Section 18, shall be conveyed as part of the Premises pursuant to the terms thereof). Landlord's review and/or approval of any request for alterations, additions or improvements in or to the Premises, and/or the plans or specifications with respect thereto, shall create no responsibility or liability on the part of Landlord, nor shall such review or

approval evidence or constitute a representation or warranty by Landlord with respect to the action or undertaking approved or the completeness, accuracy, design sufficiency or compliance of such plans or specifications with laws, ordinances, rules and/or regulations of any governmental agency or authority.

10.2 Standards of Alterations. All Tenant's alterations will be designed, engineered, constructed, furnished, and installed by a reputable licensed general contractor, designer, architect, space planner, engineer, and/or construction manager (as applicable, referred to as "Tenant's Contractor") employed by Tenant upon the following terms and conditions: (i) Tenant will perform and complete Tenant's alterations in accordance with the approved plans, and Tenant's alterations will be performed and completed at Tenant's sole cost and expense by Tenant's Contractor; (ii) Tenant will provide lien waivers to Landlord for services or materials used in performing Tenant's alterations; (iii) upon approval of Tenant's plans in accordance with the provisions of this Section 10, Tenant, through Tenant's Contractor, will commence and diligently pursue completion of Tenant's alterations; and (iv) no improvements may be installed by Tenant unless and until Tenant has submitted to Landlord certificates of insurance evidencing the insurance described in Section 14, below.

11. LIENS AND ENCUMBRANCES

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

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

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

13. INDEMNIFICATION

13.1 Tenant Indemnification. Unless solely caused by the gross negligence of Landlord, Tenant will indemnify, defend and hold Landlord and Landlord's officers, board members, and

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

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

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

14. INSURANCE & CASUALTY DAMAGE

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

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

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

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

(3) Workers' compensation insurance with Arizona statutory

minimums and employers' liability of \$100,000.

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

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

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

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

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

(g) No material work, alterations or construction may be commenced unless and until Tenant has submitted to Landlord certificates of insurance evidencing that Tenant's Contractor has in full force and effect: (i) commercial general liability insurance in an amount of at least \$1,500,000 combined single limit, including premises and operations personal injury

coverage, broad form contractual liability coverage, and completed operations coverage; (ii) property insurance with builders risk and all-risk coverage and broad form contractual liability coverage; (iii) comprehensive automobile liability insurance covering bodily injury and property damage; and (iv) workmen's compensation insurance against liability arising from claims of workmen. Tenant shall cause the insurance described above to be maintained during the period any construction is being performed on the Premises, and this insurance shall be in addition to that required under the above provisions of this Section.

(h) Landlord agrees to procure and maintain, throughout the Term and at its expense, property insurance with "all risk" coverage for fire, earthquake, flood, vandalism, malicious mischief, sprinkler leakage, glass, boiler, and machinery (if applicable) in an amount adequate to cover the cost of replacement of the Premises.

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

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

15. DEFAULT BY TENANT

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

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

(b) **Failure to Perform.** The failure by Tenant to observe or perform any of

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

(c) **Bankruptcy; Other.** The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days of filing); any Assignment in contravention of Section 12; or the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within ninety (90) days after appointment of said trustee or receiver.

15.2 Remedies in Default

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

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

15.3 **Remedies Waiver.** It is understood and agreed that Landlord's exercise of any right or remedy due to a default or breach by Tenant shall not be deemed a waiver of or to alter, affect or prejudice any right or remedy which Landlord may have under this Lease or by law or in equity. Neither the acceptance of Minimum Rent nor any other acts or omissions of Landlord at any time or times after the happening of any event authorizing the cancellation of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel or terminate this Lease upon the written notice provided for herein at any time that cause for cancellation or termination may exist, or be construed so as at any time to stop Landlord from promptly

exercising any other option, right, or remedy that it may have under any term or provision of this Lease, at law or in equity. Notwithstanding the foregoing, Landlord agrees to use its reasonable efforts to mitigate its damages resulting from a default by Tenant.

15.4 Lender Rights. Notwithstanding anything to the contrary in this Lease, in the event of any breach by Tenant, Landlord will give written notice of such breach to Tenant and also to any mortgage lender (a "Lender") that has provided any financing to Tenant in connection with the Premises and adjacent real property described in the Declaration ("Mortgaged Property") and with respect to whom Tenant has provided a written notice to Landlord (which notice shall include the name and notice address of such Lender) that such Lender is entitled to receive notices of default hereunder. Within thirty (30) days after Landlord's delivery of such default notice to all required parties, any of the noticed parties shall have the right to cure the default; provided, however, that if such default is non-monetary (i.e. any obligation hereunder except for the Tenant's obligations under Section 4 above) and cannot be cured within said 30-day period, then so long as the curing party commences such cure and uses reasonable diligence and good faith to effectuate such cure as soon as reasonably possible thereafter, but in any event, not later than one hundred (180) days after notice of such non-monetary default (subject to any additional period of time which may be reasonably required by the Lender in order to obtain possession or control of the Mortgaged Property), then Landlord shall not terminate this Lease. Any monetary default must be cured within 30 days from receipt of notice. If any Lender desires to cure such non-monetary default, but in order to effect such cure desires to appoint a receiver for the Mortgaged Property, acquire possession of the Premises or Mortgaged Property, or otherwise enforce its rights under its loan documents, then the Lender shall have such additional period of time (in addition to the cure period set forth in the immediately preceding sentence) to permit the Lender to enforce its rights under its loan documents. In addition, if such Lender acquires title to the portions of the Mortgaged Property on which it has a lien as a result of its enforcement of its loan documents, the Lender shall not be deemed to have assumed any obligations of the Tenant under the Lease first arising or accruing prior to the date that the Lender acquires title thereto (other than the obligation to pay Minimum Rent and other amounts due under Section 4 above). Landlord hereby expressly acknowledges and agrees that, so long as any Lender is diligently pursuing a cure of the non-monetary default by Tenant under this Lease in accordance with this Section 15.4, and/or any Lender is pursuing enforcement of its rights under its loan documents, Landlord shall not exercise its rights or remedies available under the terms of this Lease as a result of the Tenant's default, including, without limitation, termination of this Lease. However, if for any reason, either the Tenant fails to cure such non-monetary material default as provided herein, or any Lender elects to cure but fails to diligently pursue a cure of the Tenant's non-monetary default as provided above, then Landlord shall be entitled, at its option and as its sole right and remedy, to terminate this Lease. Notwithstanding the foregoing, Lender may exercise its Section 15.4 rights if and only if all amounts past due under Section 4 above are paid current prior to or concurrently with Lender exercising its Section 15.4 rights.

16. DEFAULT BY LANDLORD. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord under this Lease within a reasonable time, but in no event, except as otherwise provided for in this Lease, less than 60 days or more than 90 days after written notice by Tenant to Landlord. Said notice shall specify wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than 60 days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 60 day period and thereafter diligently prosecutes

the same to completion.

17. EMINENT DOMAIN

17.1 Total Taking. If all of the Premises is taken by the power of eminent domain exercised by any governmental or quasi-governmental authority, this Lease shall terminate as of the earlier of (i) the date Tenant is required to vacate the Premises, or (ii) the date title passes to the condemning authority, and upon either such date of termination, all Minimum Rent, and other costs due hereunder shall be paid to that date. The term "eminent domain" shall include the taking or damaging of property by, through or under any governmental or quasi-governmental authority, and any purchase or acquisition in lieu thereof, whether or not the damaging or taking is by the government or any other person.

17.2 Partial Taking. If more than twenty-five percent (25%) of the square feet of the Premises shall be taken or appropriated, or if the access to the Premises is materially and adversely affected, then Tenant may within thirty (30) days of such partial taking: (i) notify Landlord of Tenant's election to terminate the Lease; or (ii) notify Landlord of Tenant's election to continue this Lease. If the Tenant does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Minimum Rent shall be reduced in the same proportion as the square feet taken within the Premises bears to the total square feet of the Premises. In no event shall Landlord be obligated to restore or replace any structures or improvements taken or damaged by condemnation.

17.3 Damages; Landlord Covenant. Each party may pursue all rights to any damage award or payment for any taking by eminent domain, including, in the case of Landlord, its interest in the fee title to the Premises, and, in the case of Tenant, its leasehold interest and other rights herein. Landlord expressly covenants that Landlord will not initiate or pursue, or consent or join any initiation or pursuit of, any eminent domain action or proceeding affecting Premises in its capacity as a governmental authority.

18. PURCHASE OF PREMISES.

18.1 Grant. Landlord hereby obligates itself to sell and Tenant hereby obligates itself to purchase all but not less than all of the Premises, inclusive of any Tenant's Alterations and other improvements thereto, subject to the terms of this Section 18 and compliance with the terms and conditions of this Lease ("Purchase Right"), which Purchase Right may be exercised by Tenant during the period commencing on the date that is five years from the Commencement Date until the expiration of the Initial Term (subject to the terms of Section 18.1(b)). Tenant agrees to deliver to Landlord, on or before ninety (90) calendar days before the expiration of the Initial Term, written notice of Tenant's decision to either (i) exercise its first Option Period to extend this Lease pursuant to Section 3.2, or (ii) exercise its Purchase Right under this Section 18. If Tenant fails to timely deliver written notice to Landlord electing to exercise its first Option Period pursuant to Section 3.2, then Tenant shall be deemed to have elected in writing to exercise its Purchase Right under this Section 18.

(a) The purchase price for the Premises shall be the sum of \$4,300,000.00, less the Offset, as defined below ("Purchase Price"). The "Offset" shall

equal fifty percent (50%) of the Minimum Rent payable by Tenant throughout the Term of this Lease, through the closing of the Purchase Right ("Rent Credit"), conditioned upon Landlord receiving state transactional privilege taxes pursuant to A.R.S. §42-5031, that are collected within the boundaries of the real property subject to the Declaration, in an amount not less than three times the Rent Credit ("TIF Threshold"); provided that, if the TIF Threshold is not met, then the Rent Credit shall be proportionately reduced by the difference between one (1) and a fraction, the numerator of which is the TIF funds collected with respect to the property subject to the Declaration and the denominator is three times the Rent Credit. Landlord shall provide to Tenant (i) the calculation of Landlord's determination of the TIF Threshold, and (ii) the right to inspect and audit Landlord's books and records with thereto.

(b) If Tenant has not exercised the Purchase Right by the expiration of the Initial Term, and has exercised its option for the first Option Period, Tenant shall deposit with Landlord the sum of \$1,000,000 ("Part Payment") within thirty (30) days from the commencement of such first Option Period. The Part Payment shall be applicable to the Purchase Price, provided that the Purchase Right has been elected, and the purchase of the Premises shall have been consummated, prior the expiration of the first Option Period (except on account of a default, failure to perform by Landlord, or existence of a title exception not constituting a Permitted Exception, as defined below). If Tenant has not closed the purchase of the Premises prior to the expiration of the first Option Period (subject to the preceding parenthetical), the Part Payment shall be retained by Landlord as its liquidated damages and the Purchase Right shall terminate. If Tenant fails to pay the Part Payment within 30 days from the commencement of the Option Period (the "Part Payment Deadline"), then subject to the applicable notice and cure period provided in this Lease, Landlord may elect to terminate the Purchase Right and may sue for specific performance. All rights and remedies of Landlord under this Section are cumulative, and the exercise of any one shall not be an election excluding Landlord at any other time from exercising a different or inconsistent remedy; provided, however, if Landlord seeks to enforce the remedy of specific performance and fails to file suite for its remedy of specific performance within 60 days following the Part Payment Deadline, then Landlord will be deemed to have waived its remedy of specific performance.

18.2 Conditions. The Purchase Right described in this Section 18 and its exercise by Tenant is conditioned upon Tenant fully performing its obligations under this Lease through the dates of the exercise of the Purchase Right and the closing of the sale. To exercise the Purchase Right granted pursuant to this Section, Tenant shall execute and deliver to Landlord written notice of its intention to exercise the Purchase Right not less than 90 days from the expiration of the Initial Term, or at any time during the first Option Period, as applicable. Except as set forth in Section 18.5, the delivery of such notice will obligate Tenant to purchase, and for Landlord to sell, the Premises pursuant to the terms and conditions of this Section (provided that the Purchase Right has not been otherwise terminated due to Tenant's default).

18.3 Purchase Price. The Purchase Price will be payable in cash or certified funds as directed by Landlord. Escrow will be opened at First American Title or its successor in interest.

18.4 Closing. If Tenant elects the Purchase Right during the time between five years from the Commencement Date and the expiration of the Initial Term, closing shall occur within 90 days of

Tenant's written notice of such election. If Tenant elects the Purchase Right during the first Option Period, closing shall occur 90 days from date of the notice sent by Tenant. At closing, Landlord will convey the Premises to Tenant by special warranty deed, subject only to those exceptions reflected on Landlord's title policy issued on or near the Commencement Date (a copy of which Tenant has received) and any other matters to which Tenant has consented in writing ("Permitted Exceptions"). Landlord and Tenant will each pay fifty percent (50%) of the costs imposed by the title insurance company including escrow fees, and any documentary, transfer and recording fees and charges. Landlord will pay the cost of a standard title insurance policy and Tenant shall be responsible for the cost of any extended coverage and endorsements. At closing, Landlord will deliver the special warranty deed and an affidavit of property value. Tenant will pay the Purchase Price to Landlord and execute the affidavit of property value. Upon closing Landlord shall have no prospective financial obligations with respect to the Premises unless expressly set forth otherwise herein.

18.5 Title Insurance; No Further Liens or Encumbrances. As soon as practicable after Tenant's election to purchase the Premises, Tenant will cause the title insurance company to issue a commitment for title insurance and will deliver a copy of it to Tenant and Landlord for review. Tenant will have ten (10) days after receipt of the commitment to notify Landlord of any objections to exceptions to title (except the Permitted Exceptions), and Landlord shall cause such objections to be deleted within twenty (20) days after the date on which Landlord receives notification from Tenant. Landlord shall be obligated to convey title to the Premises in the same condition as received on the Effective Date, subject only to the Permitted Exceptions, which obligation shall be specifically enforceable by Tenant. Landlord further covenants not to encumber the Premises, subject to the Premises to a lien, or alter the condition of title to the Premises following the Effective Date (i) except with the prior written consent of Tenant and Lender, or (ii) unless any lien or encumbrance is fully dischargeable from the closing proceeds payable to Landlord from the Purchase Price. The closing of the purchase and sale of the Premises shall take place within thirty (30) days after delivery to Tenant of the commitment for title insurance described in this Section 18.5 ("Closing Date"). Prior to the closing, Tenant's obligations under the Lease will continue in full force and effect.

18.6 Representations. Tenant acknowledges that in connection with the granting of the Purchase Right and the exercise thereof, Tenant is acting based solely on its knowledge of the Premises (of which Tenant is familiar and has had and will have a full and complete opportunity to inspect). Except for those limited warranties concerning the Premises set forth in the special warranty deed, the Premises will be conveyed to Tenant AS-IS and Landlord disclaims and makes no representations or warranties concerning the Premises.

18.7 Additional Lender Rights. Notwithstanding anything to the contrary in this Lease, prior to Landlord terminating this Lease or the Repurchase Right for any reason (including but not limited to any default or alleged default by Tenant, or any failure to deliver any notice required under this Lease, or Tenant's failure to otherwise exercise and consummate its Purchase Right (including due to the lapse of any applicable deadline)), Landlord shall give to Lender a separate written notice setting forth Lender's right (but not the obligation) to exercise the Purchase Right for a period not less than ninety (90) days after such separate written notice is received by Lender. The foregoing ninety (90) day purchase right afforded to Lender shall be in addition to any other grace periods or notice and cure periods otherwise afforded to Tenant and/or Lender under the Lease. If Lender elects to exercise its Purchase Right, Landlord and Lender shall

follow the closing and conveyance procedures set forth in this Section 18; provided, however, that notwithstanding any terms of Section 18 to the contrary, Lender shall not be required to assume Tenant's obligations under this Lease and/or to cure Tenant's defaults (or alleged defaults) on Tenant's behalf, except for the obligation to pay the Minimum Rent and other amounts due under Section 4 current as of date of closing. The foregoing shall not affect any other rights provided to Lender hereunder, including those set forth in Section 15.4.

19. ACCESS BY LANDLORD. Without constituting a trespass, eviction, breach of quiet enjoyment, or forcible entry, Landlord will have the right to enter the Premises at any reasonable time to inspect the Premises or to cure any default, and to alter, improve, or repair the Premises without abatement of rent, and Landlord, for the purposes of repair and alteration, may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed so long as the business of Tenant is not interfered with unreasonably.

20. SURRENDER OF PREMISES

20.1 Surrender of Possession. On the last day of the Term of this Lease, or on the sooner termination thereof, Tenant shall peaceably surrender the Premises in good condition and repair, ordinary wear, tear and casualty excepted. On or before the last day of the Term of this Lease, or the date of sooner termination thereof, Tenant shall, at its sole cost and expense, remove all of Tenant's personal property, trade fixtures and equipment from the Premises, and all of Tenant's property not removed shall be deemed abandoned. All modification, improvements, alterations, additions and fixtures, other than Tenant's trade fixtures and equipment, which have been made or installed by either Landlord or Tenant upon the Premises shall remain the property of Landlord and shall be surrendered with the Premises as part thereof (and, upon the purchase of the Premises under Section 18, shall be conveyed as part of the Premises pursuant to the terms thereof).

20.2 Holding Over. If Tenant remains in possession of the Premises after expiration of this Lease, and without the execution of a new lease, Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month subject to all the provisions, conditions and obligations of this Lease insofar as the same can be applicable to a month-to-month tenancy, with rent escalated to one hundred twenty percent (120%) of the Minimum Rent payable by Tenant immediately prior to the expiration of this Lease.

21. QUIET ENJOYMENT. Tenant, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease on its part to be performed, shall have and quietly enjoy the Premises for the Lease Term.

22. AUTHORITY OF PARTIES. Each individual executing this Lease on behalf of Landlord and Tenant personally represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such entity in accordance with a duly adopted resolution of the board or managers of such entity, authorizing and consenting to this Lease, and resolving that this Lease is binding upon said company in accordance with its terms.

23. HAZARDOUS SUBSTANCES

23.1 Tenant Covenant. Tenant represents and warrants to Landlord that Tenant will not

generate, store, treat, use, release, or dispose of (collectively, a "release") any hazardous materials on or about the Premises except in compliance with all environmental laws, and any additional conditions imposed by Landlord and only with the express written approval of Landlord. Tenant will obtain, comply with, and provide Landlord with copies of all permits required in connection with the generation, storage, treatment, use, release, or disposal of any hazardous materials. If any hazardous materials are determined to be in, on, under and around the Premises as a result of the actions of Tenant, Tenant will comply promptly with any applicable environmental laws (which may or may not require removal of the material) at Tenant's expense. Tenant will, at Tenant's own expense, comply with all present and future environmental laws affecting Tenant's activities on the Parcel. Tenant will keep the Premises free of any lien imposed pursuant to any environmental laws as a result of Tenant's acts or failure to act under this Lease.

23.2 Definitions. As used in the Lease, the term "hazardous materials" means materials regulated under the environmental laws and asbestos, urea formaldehyde foam insulation, petroleum containing products, and any fluid containing polychlorinated biphenyls. As used in this Lease, the term "environmental laws" means all laws enacted by any governmental authorities related in any way to the regulation or protection of the environment including the following, as they may be amended from time to time: the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Resource and Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Clean Water Act (33 U.S.C. §§ 12151 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 3251 et seq.), and the Arizona Environmental Quality Act, including provisions on water quality control (A.R.S. §§ 49-210 et seq.), air quality (A.R.S. §§ 49-401 et seq.), solid waste management (A.R.S. §§ 49-701 et seq.), hazardous waste disposal (A.R.S. §§ 49-901 et seq.), and underground storage tank regulation (A.R.S. §§ 49-1001 et seq.).

23.3 Removal. Tenant will be responsible for removing from the Premises any hazardous materials released or put or permitted there by Tenant or its agents or permittees that either Tenant or Landlord is required by law to remove. In addition, Tenant will be responsible for restoring the Premises to its condition immediately prior to the time of the required removal.

24. MISCELLANEOUS

24.1 Successors or Assigns. All terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective successors, subtenants, sublessees, concessionaires, and assigns, if any, and upon any persons or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

24.2 Broker's Commission and Representation. Tenant represents and warrants that it has incurred no liabilities or claims for brokerage commissions or finders' fees in connection with the execution of this Lease and that it has not dealt with, and has no knowledge of, any real estate broker, agent, or salesperson in connection with this Lease. The parties acknowledge that Mark Irvin and Alberto Moore are licensed Real Estate Brokers in the State of Arizona and are also members of the Board of Directors of Landlord. Neither Mr. Irvin nor Mr. Moore are receiving any compensation under the terms of this Lease and have no fiduciary duty to Tenant.

24.3 Estoppel Certificate. At any time and from time to time during this Lease, either party

agrees, upon not less than ten (10) business days prior request by the other party, to execute, acknowledge, and deliver to the requesting party a statement in writing certifying to the requesting party that: (i) this Lease is unmodified and in full force and effect (or, if there have been modification, that the Lease is in full force and effect as modified and stating the modifications); (ii) the dates to which the rent and other charges have been paid in advance, if any; (iii) there are not any uncured defaults on the part of such party under this Lease (or specifying the defaults if any are claimed); (iv) there exist no defenses against enforcement of any provision of the Lease (or, if they exist, the nature of the defenses), (v) the Commencement Date and expiration of the Term; and (vi) any other information that may be reasonably requested by the requesting party.

24.4 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

24.5 No Individual Liability. The obligations of Landlord under this Lease do not constitute personal obligations of the directors, board members or officers of Landlord, and Tenant will look solely to the real estate that is the subject of this Lease and to no other assets of Landlord for satisfaction of any liability in respect of this Lease.

24.6 Notices. All notices, demands, consents, and statements that are required or permitted to be given by either party will be in writing and, to be effective, will be personally delivered or sent by overnight express delivery or mailed by United States certified mail (postage prepaid, return receipt requested) at Tenant's or Landlord's address, as set forth above. Any notice sent to Landlord shall also be sent to:

Mark Collins
Gust Rosenfeld, PLC
One South Church Avenue, Suite 1900
Tucson, AZ 85701
Telephone: 520-388-4780

Either party may change its address by notice given to the other in the manner set forth in this section. Notices, demands, and statements will be deemed given and received when personally delivered or two (2) business days after they are mailed as provided above or on the next business day after deposit with a recognized overnight express delivery service.

24.7 Waiver. The waiver by Landlord or Tenant of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained in this Lease. The subsequent acceptance of Minimum Rent, or any other costs hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular sum so accepted.

24.8 Choice of Law. This Lease shall be governed by and construed in accordance with the

substantive laws of the state of Arizona.

24.9 Legal Expenses. If any action or proceeding brought by either party against the other under this Lease, the prevailing party will be entitled to recover attorney fees in the amount the court may determine reasonable. Either party also will be entitled to recover all costs, expenses, and reasonable attorney fees that may be incurred or paid by the party in enforcing the terms of this Lease or in enforcing a judgment in its favor, whether or not the party commences litigation against the other party.

24.10 Force Majeure. If Landlord or Tenant is prevented, delayed or stopped from performing any act, undertaking or obligation under this Lease (except the payment of money such as Minimum Rent) by reason of an "event of force majeure" including strikes, lockouts, labor disputes, failure of power, acts of public enemies of this state or the United States of America, riots, insurrection, civil commotion, inability to obtain labor or materials, and/or any other material cause (except financial) beyond the reasonable control of the party whose performance is so prevented, delayed or stopped, then the time for that party's performance shall be extended one (1) day for each day's prevention, delay or stoppage by reason of such event of force majeure, but in no event more than thirty (30) days total.

24.11 Prior Agreements. This Lease constitutes the entire agreement of the parties and supersedes all prior agreements or understandings, either written or oral, between the parties with respect to the subject matter. This Lease may not be modified or amended except by written agreement of the parties.

SIGNATURES ON FOLLOWING PAGE

The parties have executed this Lease as of the date set forth above.

LANDLORD:

RIO NUEVO MULTIPURPOSE FACILITIES
DISTRICT,
a political subdivision of the State of Arizona

By: _____
Its Secretary

TENANT:

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

By: _____
Its manager

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

Attorney to Rio Nuevo

EXHIBIT "D"
TO
SALE AGREEMENT AND
ESCROW INSTRUCTIONS

(Memorandum of Lease and Purchase Right)

When Recorded Return To:
Mark Collins
Gust Rosenfeld PLC
One South Church Avenue, Suite 1900
Tucson, AZ 85701

MEMORANDUM OF LEASE AND PURCHASE RIGHT

DATE: _____, 20__

PARTIES: Rio Nuevo Multipurpose Facilities District
52 West Congress Street
Tucson, Arizona 85701
Attention: Mark Irvin ("Lessor")

5 North 5th Hotel, LLC
2140 West Moore Road
Tucson, Arizona 85755
Attention: Ms. Chris Hodgson ("Lessee")

1. Lessor has leased to Lessee, and Lessee has leased from Lessor, pursuant to a Lease and Purchase Right Agreement dated _____, 20__ (the "Lease"), certain real property more particularly described on Exhibit A attached hereto (the "Premises").

2. The term of the Lease is for an initial term of _____ years unless terminated or cancelled earlier in accordance with the terms of the Lease.

3. The Lease will terminate on _____.

4. The Lessee has an obligation to purchase the Premises pursuant to the terms of the Lease.

5. The Lease provides certain rights in favor of Lessee's Lender, as that term is defined in the Lease. As of the date of this Memorandum of Lease and Purchase Right, the "Lender" is Bank of Tucson, a division of Grandpoint Bank, whose address is _____, Tucson, Arizona, and who is an express third-party beneficiary of the Lease until the recordation by Lender of a release and reconveyance of that Deed of Trust to which Lender is the beneficiary and Lessee is the trustor. Lessor and Lessee have agreed that the Lease may not be amended without Lender's prior written consent.

6. The Lease contains certain limitations on placing of additional liens or encumbrances on the Premises. Notice of such limitations is hereby given to all persons dealing with the Premises.

7. All other terms, conditions and agreements contained in the Lease are fully incorporated herein by reference as if fully set forth herein. Copies of the Lease are on file at the offices of Lessor and Lessee.

8. In the event of a conflict between the terms of this Memorandum of Lease and Purchase Right and the terms of the Lease, the terms of the Lease shall control.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease and Purchase Right as of the date first above written.

LESSOR

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

By: _____
Its Secretary

ATTEST:

Clerk

State of Arizona

County of Pima

On this, the ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the said State, personally appeared _____, the Secretary of Rio Nuevo Multipurpose Facilities District, a political subdivision of the State of Arizona, on behalf of the District.

(Seal and Expiration Date)

Notary Public

LESSEE

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

By: _____
Its manager

State of _____

County of _____

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

(Seal and Expiration Date)

Notary Public

Exhibit A to Memorandum of Lease and Purchase Right