

**TRIPLE NET
GOVERNMENT
PROPERTY LEASE EXCISE TAX**

BY AND BETWEEN

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

“LANDLORD”

AND

5 NORTH FIFTH HOTEL, 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 ___ day of _____, 2017 (the "Effective Date"), by and between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, a special taxing district of the State of Arizona, having its office at 400 West Congress, Suite 152, Tucson, AZ 85701 (hereinafter "Landlord"), and **5 NORTH FIFTH HOTEL, LLC**, an Arizona limited liability company, having its office at 2140 West Moore Road, Tucson, AZ 85755 (hereinafter "Tenant"). Capitalized terms used in this Lease shall have the meanings ascribed to them parenthetically or in Section 2.1 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 A.R.S. §48-4201 *et seq.*

B. Landlord will own the real property more particularly described in Exhibit A-1 attached hereto (the "Garage"), and, on the conditions described in Section 1.2, below, will own the real property more particularly described on Exhibit A-2 attached hereto ("Remaining Land"). Tenant has constructed on the Garage a parking garage and relating parking facilities and improvements to service the Remaining Land; Tenant has further constructed, or renovated, improvements on the Remaining Land, consisting of a hotel, along with retail and commercial facilities. The Garage and, only from and following Landlord's acquisition of title thereto, the Remaining Land, along with all improvements thereon, constitute the "Premises." After acquisition of the Land from 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"), and Landlord receives a portion of state-shared funds derived from transaction privilege taxes (frequently called TIF funds) collected from within the CBD ("TIF Receipts"). More than one year has elapsed from the City's designation of the CBD, and Landlord has determined (based on an analysis and estimate of an independent third party) that (i) Tenant's construction and renovation of, and improvements to, the Premises (collectively, "Construction") 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").

E. This Lease is subject and subordinate to (i) the terms of that certain Promissory Note payable to Grandpoint Bank, a California corporation doing business in Arizona as the Bank of Tucson (“Grandpoint”), and Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, recorded at Sequence No. 2015-3510440, records of Pima County, Arizona, in which Tenant is the Trustor and Grandpoint is the beneficiary (“Senior DOT”), (ii) the terms of that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, recorded at Sequence No. 2015-3510441, records of Pima County, Arizona, in which Tenant is the Trustor and Grandpoint is the beneficiary (“Senior Adjacent DOT”) and (iii) the terms of that certain Promissory Note payable to the City of Tucson, an Arizona municipal corporation (“City”), and Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing recorded at Sequence No. 2016-1460596, records of Pima County, Arizona, in which Tenant is the Trustor and City is the beneficiary (“City DOT”) (the “Senior DOT,” the “Senior Adjacent DOT” and the “City DOT” will be referred to as the “Existing Deeds of Trust”), securing a construction and permanent loan.

F. It is acknowledged and agreed that the rights of and as between Grandpoint and City are more particularly set forth and controlled by that certain Intercreditor Agreement entered into by and among Grandpoint as senior lender, City as subordinated lender, and Tenant as borrower, as recorded at Sequence No. 2015-3510444, records of Pima County, Arizona (the “Intercreditor Agreement”). Grandpoint and its successors and assigns, including but not limited to any successor beneficiary under the Senior DOT or under the Senior Adjacent DOT, or at such time (if any) that the Senior DOT and Senior Adjacent DOT have been satisfied or released of record, the holder of the most senior encumbrance on the Premises (taking into account any subordination or inter-creditor agreements, including those set forth in Section 8.17 of that loan agreement dated May 25, 2016, between Tenant and the City), are sometimes referred to in this Lease as “Senior Lender.”

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 the Premises. 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. The term of this Lease ("Rental Period") shall commence, with respect to the Garage, on the Effective Date ("Commencement Date") and, subject to Tenant's Reconveyance Right and Termination Right, 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. Landlord and Tenant agree that this Lease shall include the Remaining Land, without further act by either party, upon (i) acquisition of title by Tenant to the Remaining Land, and (ii) conveyance of title to the Remaining Land from Tenant to Landlord by special warranty deed; such lease of the Remaining Land (along with the Garage) shall expire on the Termination Date, unless this Lease is sooner terminated as hereinafter provided.

§ 1.3. Tenant's Termination Right. Notwithstanding any provision of this Lease to the contrary, but subject to the provisions of Section 17.7, 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. The Parties acknowledge and agree that as long as the Landlord holds fee title to the Premises, the Existing 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 Existing 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, Senior Lender and City under the Existing Deeds of Trust.

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.

**ARTICLE 2
DEFINITIONS**

§ 2.1. 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.

“Additional Payments”: As defined in § 4.1.

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

“Board”: The Board of Directors of Landlord.

“CBD”: As defined in Recital C.

“Certificate of Occupancy”: As defined in § 9.2.

“Commencement Date”: As defined in § 1.2.

“Effective Date”: The date on which this Lease is fully executed by all parties hereto, as indicated by the latest date on the signature pages of this Lease; provided that, as the context may require, the “Effective Date”, as to the Remaining Land, shall be that date on which Tenant conveys title to the Remaining Land to Landlord.

“Enforced Delays”: As defined in § 26.1.

“Event of Default”: As defined in § 17.1.

“Impositions”: As defined in § 4.1.

“Improvements”: All buildings and improvements located from time to time on the Land.

“Land”: As defined in Recital B and is described on Exhibit A-1, and automatically shall be modified to include the Remaining Land described on Exhibit A-2 upon Landlord’s acquisition of title thereto.

“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).

“Option Period”: As defined in §28.2.

“Premises”: As defined in Recital B.

“Reconveyance Right”: As defined in §28.1.

“Rental Period”: The period beginning on the Commencement Date and ending 25 years from the Effective Date, subject to the Termination Right, and the Reconveyance Right in accordance with Article 28.

“Second Notice”: As defined in § 17.2.

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

“Termination Right”: As defined in § 1.3.

ARTICLE 3 RENT

§ 3.1. Net Rent.

A. Base and Adjustments. Tenant covenants to pay to Landlord as rental for the Premises the sum of \$10.00 per year on the Commencement Date and every anniversary thereof (“Net Rent”). Tenant shall have the right to prepay the \$250.00 total Net Rent for the entire term of this Lease. The consideration for this Lease includes, without limitation: Tenant’s payment of the entire cost of construction of the improvements constituting the Premises, Tenant’s performance of all of the covenants and obligations under this Lease and Tenant’s contribution toward fulfillment of Landlord’s policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City, and to enhance tax revenues resulting from the operation of businesses on the Premises, including transaction privilege taxes and the government property lease excise tax. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the rental for the entire lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid rental.

B. [Omitted].

§ 3.2. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the 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 to 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 Rental Period shall be paid by Tenant. Landlord shall be indemnified and held 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 Rental Period, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Tenant's failure, refusal, or inability for any reason to occupy the Improvements) shall relieve Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve Tenant of any of its other obligations under this Lease.

ARTICLE 4 ADDITIONAL PAYMENTS

§ 4.1. "Additional Payments" Defined. Tenant shall pay all Additional Payments during the Rental Period, without notice (except as specifically provided herein) and without abatement, deduction or setoff (except as provided in § 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 and all taxes, including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax ("GPLET"), 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, foreseen and unforeseen, of any kind and nature whatsoever, which, at any time during the Rental Period may be assessed, levied, confirmed, imposed upon, or increase 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 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 Rental Period 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 § 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 annual Net Rent, all taxes imposed by any governmental unit on the 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 Landlord sufficient security (as determined by Landlord) to pay or satisfy such contested item together with interest and penalties thereon (as reasonably estimated by Landlord), 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 decrease of an Imposition or assessment upon the Premises for the purpose of reducing the amount thereof. Landlord will reasonably cooperate with Tenant for that purpose, at no expense to Landlord. 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 to the extent to which it may be based on a payment made by Tenant.

§ 4.5. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in §§ 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 indemnify and hold 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 Arizona Revised Statutes Section 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax ("GPLET") provisions of Arizona Revised Statutes ("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.

§ 4.7. Exemption. Tenant acknowledges that 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 provide Landlord with a certification from the Pima County Assessor that such exemption applies to the particular use anticipated for all or a portion of the Premises. 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.

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 initial and renewal insurance certificates for the Premises, 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 are 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 WASTE; TITLE

§ 6.1. [Omitted].

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

§ 6.3. Title. Title to the Improvements shall automatically vest in Landlord during the Rental Period without the requirement of any deed, conveyance, or bill of sale

thereon, subject, however, to Tenant's Termination Right and Reconveyance Right 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.

§ 6.4. [Omitted].

**ARTICLE 7
LANDLORD'S PERFORMANCE FOR TENANT**

§ 7.1. Cures--Rights, Costs, and Damages. 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, subject to the notice and cure periods described in Article 17, 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 further notice. Bills for any expense incurred 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 the 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 disbursement 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 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 8
USES AND MAINTENANCE**

§ 8.1. 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 Effective 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. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, demolition, replacement, maintenance, and

management of the Premises, including but not limited to, the performance of all burdens running with the Land.

§ 8.2. 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 hotel, restaurant, entertainment, parking, retail, residential, and office uses, 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 sole discretion. 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.

§ 8.3. Maintenance, Repairs, Indemnity. Tenant shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises, and the sidewalks, curbs, and landscaping thereon, in good condition and repair in accordance with the City's 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 hold 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 materials supplied in or about the Premises, subject to the provisions of Article 11 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 or contractors.

ARTICLE 9 COMPLIANCE

§ 9.1. Tenant Obligations. Tenant shall assume and perform any and all obligations under any covenants, easements and agreements affecting the Premises. Tenant shall diligently comply, at its own expense, during the Rental Period, with all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations ("Laws"), 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, 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. Landlord shall not adopt any regulations ("Regulations") under this Lease without Tenant's prior written consent.

ARTICLE 10 CONSTRUCTION AND OPERATION OF IMPROVEMENTS

§ 10.1. The Improvements. The Improvements consist of buildings located within the city block bounded by 5th Avenue, Broadway Boulevard, Congress Street and Arizona Avenue, Tucson, Arizona, consisting of a hotel, parking garage, retail and commercial facilities and associated amenities. Tenant has provided the plans and specifications for the Improvements (the "Plans and Specifications") to the City for approval. Landlord has been provided, and has approved, a copy of the Plans and Specifications.

§ 10.2. Government Approvals. Tenant will obtain any required approvals by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter with respect to any material alterations and additions to the Improvements, if required, and provide conformed copies of executed approvals (if any) to Landlord.

§ 10.3. Completion Requirements. Tenant has constructed or renovated the Improvements in a good, careful, proper, and workmanlike manner in 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. The parties acknowledge that construction of the Improvements was completed within five (5) years from the Effective Date; the parties acknowledge that the Commencement Date must occur within ten (10) years of Landlord's approval of this Lease, to the extent required by ARS Section 42-6206(C).

§ 10.4. Ownership of Buildings and Improvements.

A. During Term. During the Rental Period, title to the Land, the Improvements and all additional improvements constructed on the Land for Tenant pursuant to this Lease shall be in the Landlord, subject to the rights of Lenders under Article 16.

B. Ownership at Termination. On the expiration or sooner termination of the Rental Period, title to the Land and all buildings and improvements which constitute or are a part of the Premises, shall (without the payment of compensation to Tenant or others) be vested in Tenant, in accordance with Article 18. This provision 10.4 shall survive the expiration or earlier termination of this Lease.

§ 10.5. Tenant's Management and Operating Covenant. During the Rental Period, Tenant shall prudently manage and continuously operate (or cause to be managed and continually operated) the Improvements and will properly maintain the Improvements and all other improvements to the Premises in good condition and repair, reasonable wear and tear excepted. Tenant may also construct alterations and additional improvements to the Premises without Landlord's consent. Tenant shall, at its expense, maintain the Premises in good condition and repair and shall make all structural repairs and replacements to both the exterior and interior of the Premises and to parking surfaces (if any) necessitated by any cause. Without limiting the generality of the foregoing, Tenant shall, at its sole cost and expense, be responsible for the care, maintenance and replacement of all heating, ventilation and air conditioning equipment and parts thereof serving the Premises, whether or not such equipment was installed by Tenant or Landlord, and Tenant shall replace all cracked, chipped and broken windows, doors and other glass on the Premises. 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 installations therein. If Tenant fails to comply with the foregoing requirements, Landlord may (but shall not be obligated to) effect such maintenance and repair, and its cost shall be due and payable as additional rent to Landlord within ten (10) days after Landlord's written demand.

ARTICLE 11 IMPAIRMENT OF LANDLORD'S TITLE

§ 11.1. No 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 11 are not intended to limit the Existing Deeds of Trust or any rights Tenant may have under Article 16 of this Lease.

§ 11.2. 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.

§ 11.3. 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.

§ 11.4. No Agency Intended. The parties acknowledge that Tenant is required to operate and maintain the Improvements. 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 12 INSPECTION

§ 12.1. Inspection and Entry. 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 twenty-four (24) hours' written notice prior to any inspection of any building interior.

This notice provision shall not be construed to prohibit or delay any entry by Landlord as a result of an emergency, or any entry authorized by any writ or warrant issued by any court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

ARTICLE 13 INDEMNIFICATION

§ 13.1. Indemnification of Landlord.

A. Tenant shall indemnify, defend and hold 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, incurred by or asserted against Landlord by reason of any of the following:

(1) operation or maintenance of the Improvements 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 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 of the assets of, or funds appropriated to, Landlord, 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 entered after the Effective Date and affecting the Premises or improvements, the Improvements, 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 attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the Rental Period.

The provisions hereof shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, 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 or contractors.

B. 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 shall hold 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.

C. The obligations of Tenant under this section shall not in any way be affected by the absence in any case of insurance coverage on the Premises 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.

D. 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), or 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.

E. Notwithstanding anything to the contrary in this Lease, the indemnification obligations set forth in this Article 13 and elsewhere in this Lease shall not extend liability to or apply to Senior Lender, for so long as Senior Lender does not foreclose on Tenant's leasehold interest. Furthermore, if Senior Lender or any successor to Senior Lender (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 14

DAMAGE OR DESTRUCTION

§ 14.1. Tenant Repair and Restoration. If at any time during the Rental Period the Premises, or any part thereof, shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, then subject to Tenant's Termination Right (and subject to the provisions of the Senior DOT), Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same, or to remove the damaged improvements and restore the Premises to a clean condition. Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

§ 14.2. Payment of Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Article 5, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof shall be paid to Tenant (subject to the provisions of the Senior DOT).

§ 14.3. Failure to Commence Repairs. If Tenant is required to restore the Premises pursuant to § 14.1 above and the design work for such restoration shall not have been commenced within one hundred and eighty (180) days after the date of the damage or destruction, or if such work is not completed within twenty-four (24) months after

completion of such design, Landlord may terminate this Lease pursuant to Article 17, subject in all events to Tenant's Reconveyance Right.

§ 14.4. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay Net Rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant of or from any obligations imposed upon Tenant hereunder.

ARTICLE 15 CONDEMNATION

§ 15.1. Total, Substantial, or Unusable Remainder.

A. If at any time during the Rental Period of this Lease:

(1) **Total or Substantial Taking.** Title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority, and the Net Rent and Additional Payments reserved shall be apportioned and paid to such date; or

(2) **Remainder Unusable for Purposes Leased.** Title to a substantial portion of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceeding, and the remaining part of the Premises cannot feasibly be used or converted for use by Tenant for the uses set forth in § 8.2 hereof, Tenant may, at its option, terminate this Lease within ninety (90) days after such taking by serving upon Landlord at any time within said ninety (90) day period, a thirty (30) day written notice of Tenant's election to so terminate.

B. Award. In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, 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, subject to the rights of Senior Lender, including under the terms of the Senior DOT and Senior Adjacent DOT.

§ 15.2. Partial Taking--Lease Continues. In the event of any taking of less than the whole or substantially all of the Premises, the Rental Period shall not be reduced or affected in any way, and this Lease shall continue in full force and effect.

A. Award Payment. Tenant shall be entitled to all compensation paid by the condemning authority in the event of a partial taking, subject to the rights of Senior Lender, including under the terms of the Senior DOT and Senior Adjacent DOT.

B. Restoration of Remainder. If such taking occurs during the Rental Period and the remaining part of the Premises can feasibly be used or converted for use

by Tenant as contemplated in § 8.2 hereof, then subject to Tenant's Termination Right (and subject to the rights of Senior Lender, including under the terms of the Senior DOT and Senior Adjacent DOT), Tenant, at its sole cost and expense and whether or not the condemnation proceeds shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter (including any necessary demolition and reconstruction) and restore the remaining part of the Premises to substantially their former condition, so as to be complete, rentable and usable, and of the quality provided for in this Lease, for the original construction of the affected improvements.

§ 15.3. Rights of Participation. Each party shall have the right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein.

§ 15.4. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceeding affecting the Premises, the party receiving such notice shall promptly notify the other party of such notice and the contents thereof.

ARTICLE 16

ASSIGNMENT AND SUBLETTING; RIGHTS OF LENDERS

§ 16.1. Transfers by Tenant

A. [Omitted].

B. After Effective Date. After the Effective Date, Tenant may assign, mortgage, pledge, encumber, sublease or transfer this Lease, or any part of its rights, interests, estates and obligations hereunder, to all of the Premises or to any legally identifiable portion of the Premises (each, a "Parcel"), without the prior, written consent of Landlord in each instance.

C. Assumption Instrument. Except for the collateral assignments granted to Senior Lender, including in connection with the Senior DOT and/or Senior Adjacent DOT (which are hereby acknowledged and approved by Landlord), no Transfer shall be binding upon Landlord unless such assignee or purchaser shall deliver to 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 liabilities as above set forth. Upon recordation of the assumption instrument, Tenant shall be released from all liabilities and obligations under this Lease accruing thereafter, and the assignee shall be and become and remain liable for the payment of all rents and other sums payable hereunder 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 Rental Period. The provisions hereof shall be operative for and apply to each subsequent assignment.

§ 16.2. 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 § 8.2 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 hereunder;

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.

F. [Omitted].

G. 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.

H. Tenant shall deliver to Landlord on or before the 15th day of each calendar month, 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.

§ 16.3. Rights of Lenders. Landlord is aware that Tenant has obtained and will obtain financing or refinancing for the acquisition, development and/or construction of the Improvements and other improvements to be constructed on the Premises, in whole or in part, from time to time, by one or more persons (individually a "Lender", and collectively the "Lenders"), and that Tenant will secure Tenant's obligations to such Lenders by means of 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, collateral assignment or otherwise ("Leasehold Mortgage"). Senior Lender, as primary lender, and the City, as subordinated lender, shall each constitute a Lender, and the Existing Deeds of Trust shall each constitute a Leasehold Mortgage. Notwithstanding anything in this Lease to the contrary, until such time, if any, that the Senior DOT is satisfied and released of record or the beneficiary under the Senior DOT gives written notice to Landlord that said Senior DOT has been satisfied, the rights, privileges, elections and benefits of "Lender" under this Lease shall only be enforceable by Senior Lender in its capacity as the beneficiary under the Senior DOT, and all references in this Lease to "Lender" shall be deemed to refer only to Senior Lender. At such time, if any, that the Senior DOT has been satisfied and released of record but the Senior Adjacent DOT remains of record, then the rights and priorities set forth in this Section 16.3 shall apply to the Senior Lender in its capacity as beneficiary under the Senior Adjacent DOT, such that the rights, privileges, elections and benefits of "Lender" under this Lease shall only be enforceable by Senior Lender before any other Lender.

§ 16.4. Notices and Recognition of Lenders. In the case of an Event of Default, Landlord shall provide notice of the Event of Default, at the same time notice is provided to Tenant pursuant to Article 17, to all Lenders previously designated by Tenant to receive such notice (including Senior Lender and the City, the "Designated Lenders") whose names and addresses were previously provided by written notice to Landlord in accordance with Article 20. No notice given by Landlord to Tenant shall be binding upon or affect the Designated Lenders unless a copy of the Notice shall be given to the Designated Lenders pursuant to this section. Landlord shall give Tenant copies of any such notice provided to the Designated Lenders, and, unless Tenant notifies Landlord that the Designated Lenders names or addresses are incorrect (and provides Landlord with the correct information) within three (3) business days after Tenant receives its copies of such notice from Landlord, Landlord shall be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Tenant may provide notices to other Lenders. If Lender cures the Event of Default and/or assumes Tenant's position with respect to this Lease, Landlord agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Tenant under this Lease. Landlord shall, at any time upon reasonable request by Tenant, provide to any Lender an estoppel certificate or other document evidencing that this Lease is in full force and effect and that no Event of Default by Tenant exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, Landlord will enter into a separate non-disturbance agreement with such Lender, consistent with the provisions of this § 16.4.

§ 16.5. Additional Covenants for the Benefit of Lender.

A. 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 the Lender without its prior written consent.

B. Lender shall have the cure rights set forth in this Subsection 16.5. If Tenant fails to cure a default within the applicable cure period, then the Lender shall have the right for a period of sixty (60) days after the later of (i) written notice to the Lenders 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 Lender may reasonably require to effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Lender shall thereby and hereby be subrogated to the rights of Landlord. Landlord agrees that the Lender shall not be required to pay default interest to cure any payments defaults by Tenant unless so required by a third party. The Lender shall have the right to enter upon the Premises to render such performance.

C. In case of an Event of 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 Lender without taking possession of the Premises, in such Lender's reasonable opinion, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

1. the Lender 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 Lender from obtaining such possession); or

2. the Lender 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 Lender from obtaining such possession).

The Lender shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to subsection C.1 above, or to continue to prosecute foreclosure proceedings pursuant to subsection C.2 above, if and when such Event of Default has been cured. If a Lender, its nominee or any successor to Lender or lender's nominee (including a purchaser at a foreclosure sale, trustee's sale or deed in lieu of foreclosure) succeeds to Tenant's leasehold estate hereunder, 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.

D. If any Lender 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 15.5.C above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

E. If Lender, its nominee or any successor for Lender or lender's nominee (including a purchaser at a foreclosure sale, trustee's sale or deed in lieu of foreclosure) succeeds to Tenant's leasehold estate hereunder or under a new Lease under Section 16.7 below, the parties agree and acknowledge such Lender shall not be liable or responsible for and shall not be deemed to have assumed liability for any other prior actions, omissions, defaults, breaches or other events caused by or relating to the original Tenant. Rather, such successor Tenant shall only be liable and responsible for acts, omissions, defaults, breaches or events occurring while it is the Tenant hereunder. Nothing in this Section 16.5.E releases the original Tenant from liability arising from events during Tenant's operation of the Premises, nor limits or otherwise modifies Landlord's remedy under Section 17.3 to terminate this Lease for certain Events of Default, subject to Lender's right to cure an Event of Default in accordance with the provisions of this Section 16.5, and the right to enter into a new lease in accordance with the provisions of Section 16.7.

§ 16.6. Landlord's Lien Waiver. Landlord hereby waives any landlord's lien, and 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.

§ 16.7. New Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any default by Tenant), Landlord, if requested by any Lender, will enter into a new lease of the Premises with the most senior Lender 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 upon the terms, covenants and conditions herein contained, provided: (i) such Lender shall make written request upon Landlord for the new lease within sixty (60) days after the date such Lender receives written notice from Landlord that the Lease will be or has been terminated, whichever occurs first; (ii) such Lender 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 Lender 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 Lender.

A. 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.

B. Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 16.7 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.

C. Nothing herein contained shall require any Lender to enter into a new lease pursuant to this Section 16.7 or to cure any default of Tenant referred to above.

D. If any Lender shall demand a new lease as provided in this Section 16.7, Landlord agrees, at the request of, on behalf of and at the expense of the Lender, 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.

E. Unless and until Landlord has received notice from Lender that the Lender elects not to demand a new lease as provided in this Section 16.7, 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 Lender.

F. Neither the foreclosure of any Leasehold Mortgage (whether by judicial

proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Lender 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.

G. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Lender, merge with any interest, estate or rights of Landlord in or to the Premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Lender, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

ARTICLE 17 DEFAULT BY TENANT

§ 17.1. Events of Default. The happening of any one of the following events (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 sixty (60) 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 ninety (90) days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such ninety (90) 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 ninety (90) 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. 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 hereunder, including for any liability arising during the lapsed or previously uncovered period.

§ 17.2. Notice and Termination. Upon the occurrence of one or more of an Events of Default listed in § 17.1, Landlord may, at any time thereafter, but not after such default is cured, give written notice ("Second Notice") to Tenant, specifying the Event(s) of Default and stating that this Lease and the Rental Period hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of the Second Notice and upon the date specified in the Second Notice,

subject to the rights of Tenant and Lender, and further subject to Tenant's Reconveyance Right, this Lease and the Rental Period 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 28.1 shall control.

§ 17.3. Tenant Liability. In the event 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 rights of Lender, Tenant shall pay Landlord any amounts required to be paid by Tenant hereunder. 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 all other financial obligations of Tenant as they become due.

§ 17.4. 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.

§ 17.5. 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 and remedies, 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. 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 one and one half percent (1.5%) per month, but in no event an amount greater than permitted by law, but such interest shall in no way limit any claim for damages available to Landlord for any breach or default by Tenant.

§ 17.6. Self-Help. If the cure of an Event of Default has not been commenced within sixty (60) calendar days after service of the notice of default under §17.1(B) and such default is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, enter upon the Premises and cure such default, in which event Landlord may charge Tenant for its related costs and expenses, together with an administrative fee not to exceed 15% of all such costs, which shall be paid to Landlord within 10 days after receipt of an invoice therefor.

§ 17.7. 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 28.1.

B. Deeds of Trust and Tenant. If the Senior DOT or Senior Adjacent DOT, or (upon release of both) the lien of a successor Senior Lender encumbers the Premises, Tenant may not exercise, terminate, modify or waive its Option under this Section 17.7 without the prior written approval of the Senior Lender, which consent may be withheld in its sole and absolute discretion.

ARTICLE 18 DEFAULT BY LANDLORD

§ 18.1. Default by Landlord. Upon the failure by Landlord to observe and perform any material provision of this Lease to be observed or performed by Landlord, Tenant shall, before exercising any remedy available to it, give Landlord written notice of the claimed failure. For ninety (90) days following such notice, Landlord shall have the right to cure such failure, or, if such failure cannot be cured within that time, such additional time as may be necessary if, within such period, Landlord has commenced and is diligently pursuing the remedies necessary to cure such breach. If such breach remains uncured, then Tenant may, at its option and as its sole remedies, have any one or more of the following described remedies: (i) pursue an injunction to enjoin the breach; (ii) pursue specific performance of Landlord's obligations under this Lease; or (iii) seek money damages for loss arising from Landlord's failure to discharge its obligations under this Lease.

ARTICLE 19 UNENFORCEABLE TERMS

§ 19.1. Severability. 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 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 modified and reformed to the extent reasonably possible in such

a manner so that the modified/reformed agreement (and any related agreements effective as of the same date) provides essentially the same rights and benefits (economic and otherwise) to the parties as if such severance and modification/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 modified and reformed.

ARTICLE 20 NOTICES

§ 20.1. Notices. Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, except as required pursuant to Article 12, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other parties at the addresses 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:

5 North 5th Hotel, LLC
Attention: Scott Stiteler
2140 West Moore Road
Tucson, Arizona 85755

With a copy to:

Werner J. Meyer, Esq.
5727 North 7th Street
Suite 407
Phoenix, Arizona 85014

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 three 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 21 CONDITION

§ 21.1. Condition of Premises. Tenant represents that the Land and all portions thereof, including, but not limited to, any subsurface conditions, and the past and present uses and non-uses thereof, as well as the condition of title 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 by Landlord, express or implied, in fact or by law, including any warranty of merchantability or for a particular purpose, 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.

Upon the Effective Date, Tenant shall accept the Premises as being in good and satisfactory condition and suitable for Tenant's use. Upon Landlord tendering possession of the Premises to Tenant, Tenant will accept possession of the Premises. Tenant will accept the Premises in "AS-IS," and "WHERE-IS" condition.

§ 21.2. 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 THEREOF, THE IMPROVEMENTS, INCLUDING FOR 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 EXISTING 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 22

QUIET ENJOYMENT

§ 22.1. Quiet Enjoyment. Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the 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 Rental Period, including, without limitation, the right to make improvements to, and sublet the use of, the Premises, without hindrance or molestation by Landlord.

§ 22.2. Agreement for Non-Disturbance of Subtenants. Landlord covenants and agrees, for the benefit of any subtenant, that (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, which shall be subject to this Lease, Landlord 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 tenant's sublease, (ii) it shall recognize the continued existence of the sublease, (iii) it shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, in the event Tenant's interest under this Lease is terminated, and (iv) it 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 also in the event Tenant's interest under this Lease is terminated. 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 22.2

ARTICLE 23

ESTOPPEL

§ 23.1. Estoppel Certificates. Landlord, Tenant or Lender may request a certificate from Landlord or Tenant (including Tenant's assignees and subtenants) evidencing whether or not:

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any; and

C. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

The party receiving such a request shall cooperate with the requesting party and shall deliver a written response within twenty (20) days of such request.

ARTICLE 24 CONSENTS

§ 24.1. Parties and Notice. Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if such 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.

§ 24.2. No Unreasonable Withholding. Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld nor delayed, except where otherwise specifically provided.

ARTICLE 25 LANDLORD NOT LIABLE

§ 25.1. Limitation of Liability. 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 location; 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 driveways adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor. The foregoing shall not apply to the negligence or intentional acts or omissions of Landlord, its agents, employees or contractors.

ARTICLE 26 ENFORCED DELAY

§ 26.1. Enforced Delay; Extension of Time of Performance. Whether stated or not, all periods of time in this Lease are subject to this section. Neither Landlord nor Tenant, as the case may be, shall be considered to have caused or failed to timely cure 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 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 a moratorium or similar hiatus directly affecting the Property (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 Property 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 Property requiring repatriation, study, removal or further acts mandated by federal or state law; or the discovery of endangered species on, at or affecting the Property;

C. an 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 the issuance of any permit, license, consent, authorization, or approval necessary to Tenant 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 terms of this Lease by the party claiming the delay; provided, however, that a party's contest in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a party of an Enforced Delay;

D. the denial of an application, failure to issue, or suspension, termination, delay or interruption (collectively, a "Denial"), in the issuance or renewal of any permit, approval or consent required or necessary in connection with Tenant or Landlord's undertakings pursuant to this Lease, if such Denial is not also the result of a failure to comply with Applicable Laws or to fully comply with the applicable application requirements by the party claiming the delay; provided that a party's contest 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 an Enforced Delay;

E. unreasonable delay by the City of Tucson 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 materially address in good faith 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 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.

§ 26.2. Enforced Delay Exceptions and Notice. In no event will an 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 this Lease. 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 26 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 further, 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 other party.

ARTICLE 27

COMPLIANCE WITH ENVIRONMENTAL LAWS

§ 27.1. 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 Rental Period.

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

§ 27.2. Compliance. Tenant shall, at Tenant’s own expense, comply with all present and future Environmental Laws, and any amendments thereto, 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 within 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.*

§ 27.3. Indemnification.

A. Tenant shall indemnify, defend and hold harmless Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, and 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, in each case which are incurred by or assessed against Landlord and the other parties described above in this subsection, as a result, whether in part or in whole, from any use of the Premises during the Rental Period 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 27 shall continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises during the Rental Period. 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 or within 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.

B. Without limiting the foregoing, if the presence of any Regulated Substance on or from the Premises results in any contamination of the Premises or any adjacent real property during the Rental Period, Tenant shall promptly take all actions, at its sole cost and expense, as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises or other property to the condition existing prior to the introduction of any Regulated Substance on the Premises; provided that Landlord's written approval of such actions shall first be obtained, which shall not be unreasonably conditioned, withheld or delayed. 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 impairing 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 from the Premises during the Rental Period. 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 copy, within ten (10) days of Tenant's receipt of written request therefor, 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 Tenant on or from 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 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. Tenant shall insert provisions comparable to this Article 27 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 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.

§ 27.4. 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 27 or applicable Environmental Law shall constitute a material breach 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 from 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 27 shall survive the expiration or earlier termination of this Lease.

ARTICLE 28 RECONVEYANCE OF PREMISES

§ 28.1. Reconveyance on Expiration or Termination; "Reconveyance Right". Upon the expiration of the Rental Period or upon the earlier termination thereof, including, without limitation, pursuant to Section 1.3 and Article 17, 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 (i) a Lender exercises its rights under Section 16.7 and enters into a new lease as described therein, or (ii) until Landlord has received notice from Lender that the Lender elects not to demand a new lease as provided in Section 16.7, or until the period therefor has expired. Without limiting the generality of Section 16.7, such new lease shall include this Section 28 which will allow the title to the Premises to vest in Lender, as the new tenant thereunder, or any successor in interest to such Lender, 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 Sections 28.3.B below. The provisions of this Article 28 shall survive the expiration or other termination of this Lease

§ 28.2. Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Premises to Tenant; (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 ("FIRPTA") 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 Tenant's successor by foreclosure, as the case may be.

§ 28.3. Conveyance of Premises.

A. Expenses.

No reconveyance of the Premises shall discharge Tenant from its obligation to satisfy the amount of any uncured Monetary Defaults accrued during the Rental Period, which shall be payable to Landlord within thirty (30) days of demand. Tenant shall pay any and all closing costs incurred in connection with the conveyance, including, but not limited to, the title insurance policy to be issued to Tenant, as well as any survey requested by Tenant.

B. Conveyance of Title and Delivery of Possession.

Landlord and Tenant agree to perform all acts necessary for conveyance of the title to the Premises from Landlord to Tenant. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit G. All expenses in connection with the conveyance of the Premises to Tenant including, but not limited to, title insurance (if requested by Tenant), recordation and notary fees and all other closing costs (including escrow fees if use of an escrow is requested by Tenant), shall be paid by Tenant. Possession of the Premises shall be delivered to Tenant as the owner thereof concurrently with the conveyance of title. Tenant acknowledges that the title to the Premises may be encumbered by matters that were caused by Tenant during the Rental Period and that Landlord has no obligation to remove such encumbrance(s).

C. Title and Warranties. Notwithstanding anything to the contrary in this Section, Landlord shall convey the Premises subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the written consent of Tenant. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

ARTICLE 29 MISCELLANEOUS

§ 29.1. 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.

§ 29.2. 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, Tucson Division. 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.

§ 29.3. Memorandum. Landlord and Tenant agree to execute a short form memorandum of this Lease in the form attached as Exhibit B, for recording in the Office of the County Recorder, Pima County, Arizona. Upon the addition of the Remaining Land to this Lease, Landlord and Tenant agree to amend such memorandum to incorporate the Remaining Land therein.

§ 29.4. 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 agreement hereafter made between 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 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.

§ 29.5. Captions. The captions of the 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 article and section numbers are to those in this Lease unless otherwise noted.

§ 29.6. Execution and Delivery. This Lease shall bind Tenant upon its execution by Tenant. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

§ 29.7. 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.

§ 29.8. 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 had so acted, or had given or received such notice, demand, request, or other communication, or had given or received such payment or refund, or 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 had given or received such notice, demand, request, or other communication, or had given or received such payment or refund, or had signed.

§ 29.9. No Third Party Beneficiaries. No third party 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.

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

- Exhibit "A-1" Legal Description of Garage
- Exhibit "A-2" Legal Description of Remaining Land
- Exhibit "B" Memorandum of Lease
- Exhibit "C" Insurance Requirements
- Exhibit "D" Prohibited Uses
- Exhibit "E" Form of Special Warranty Deed

§ 29.11. Attorneys' Fees. Except as set forth in §29.2, each party shall bear its own attorneys' fees in the preparation of this Lease and any other documents related to the Premises.

§ 29.12. Time of Essence. Time is of the essence of this Lease.

§ 29.13. 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 the Senior Lender, which consent may be given or withheld in their respective sole and absolute discretion. 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 Senior Lender, 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 Existing 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.

§ 29.14. Senior Lender; 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 Senior Lender for the purpose of implementing the mortgagee-protection provisions contained in this Lease, or allowing that Senior Lender have reasonable means to protect or preserve its lien, including the Senior DOT or Senior Adjacent DOT (as applicable), 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 Senior Lender. 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 Senior Lender or any successor to Senior Lender (including a purchaser at a foreclosure sale, trustee's sale or deed in lieu of foreclosure) 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, Senior Lender or such successor shall have the right to do so without consent of Landlord and, from and after the time Senior Lender or such successor takes such title, Landlord shall recognize Senior Lender or its successor as the Tenant under this Lease.

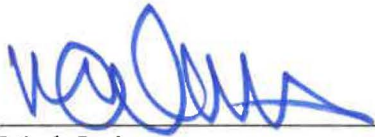
In Witness Whereof, the parties have executed this Lease on the date set forth on the first page.

“Landlord”

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

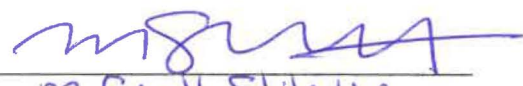
By: 
Name: Fletcher McCusker
Its: Chairman

ATTEST:

By: 
Name: Mark Irvin
Its: Secretary

“Tenant”

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

By: 
Name: M. Scott Stitelze
Its: Manager

DISTRICT AND 5 NORTH FIFTH HOTEL, LLC LEASE

EXHIBIT "A-1"

Legal Description of the Garage

Real property in the City of Tucson, County of Pima, State of Arizona, described as follows:

Unit 2 of AC HOTEL TUCSON CONDOMINIUM, as created by the Condominium Declaration recorded as Sequence No. 2015-2370544, and as shown on the Condominium Plat recorded as Sequence No. 2015-2370543, Official Records of Pima County, Arizona.

Together with undivided interests in the common elements as set forth in said declaration and plat.

DISTRICT AND 5 NORTH FIFTH HOTEL, LLC LEASE

EXHIBIT "A-2"

Legal Description of the Remaining Land

PARCEL 1

Units 1 and 3 of AC HOTEL TUCSON CONDOMINIUM, as created by the Condominium Declaration recorded as Sequence No. 2015-2370544, and as shown on the Condominium Plat recorded as Sequence No. 2015-2370543, Official Records of Pima County, Arizona.

Together with undivided interests in the common elements as set forth in said declaration and plat.

PARCEL 2

That portion of Block 92 of "City of Tucson", according to the official survey map and field notes of said City, made and executed by S.W. Foreman, approved and adopted by Mayor and Common Council of said City (then Village), Pima County, Arizona on June 26th, 1872, in Section 12, Township 14 South, Range 13 East, Gila and Salt River Meridian, a copy of which is recorded in the Office of the County Recorder of Pima County, Arizona, recorded in Book 3 of Maps and Plats at Page 71 thereof, being more particularly described as follows:

Commencing at a 2" brass cap survey monument at the centerline intersection of 5th Avenue and Broadway Boulevard, from which a 2" brass cap survey monument at the centerline intersection of 6th Avenue and Broadway Boulevard bears South 89°32'26" West 475.44 feet distant;

Thence North 00°26'21" West 39.35 feet upon the centerline of 5th Avenue;

Thence South 89°33'39" West 39.60 feet to the West right-of-way of 5th Avenue, to the Southeast corner of Block 92 of said "City of Tucson";

Thence North 00°26'21" West 151.87 feet upon the East line of said Block 92, upon the West right-of-way of said 5th Avenue, to the Point of Beginning;

Thence South 83°37'58" West 84.45 feet to a curve, turning to the left, concave to the South, with a radius of 25.00 feet;

Thence Southwesterly upon said curve through a delta angle of 4°15'27" and an arc length of 1.86 feet;

Thence South 79°22'30" West 13.94 feet to a curve, turning to the right, concave to the North, with a radius of 10.00 feet;

Thence Westerly upon said curve, through a delta angle of $10^{\circ}15'27''$ and an arc length of 1.79 feet;

Thence South $89^{\circ}37'58''$ West 23.32 feet to a curve, turning to the right, concave to the North, with a radius of 13.00 feet;

Thence Northwesterly upon said curve, through a delta angle of $23^{\circ}04'26''$ and an arc length of 5.24 feet to a reverse curve, turning to the left, concave to the South, with a radius of 37.00 feet;

Thence Westerly upon said reverse curve, through a delta angle of $23^{\circ}04'26''$ and an arc length of 14.90 feet;

Thence South $89^{\circ}37'58''$ West 1.25 feet;

Thence North $00^{\circ}01'50''$ West 12.05 feet;

Thence South $86^{\circ}46'07''$ West 39.44 feet to the East right-of-way of Arizona Avenue;

Thence North $00^{\circ}24'25''$ West 89.98 feet upon said East right-of-way, to the South right-of-way of Congress Street;

Thence North $86^{\circ}35'49''$ East 185.00 feet upon said South right-of-way, to the East line of said Block 92, to the West right-of-way of 5th Avenue;

Thence South $00^{\circ}26'21''$ East 102.13 feet upon said East line, upon said West right-of-way, to the Point of Beginning.

PARCEL 3:

An aerial easement building overhand, roof patio and sign as created by Grant of Aerial Easement recorded September 2, 2015 as 2015-2450654, of official records.

EXHIBIT B

(Memorandum of Lease)

When Recorded, return to:
Werner J. Meyer, Esq.
5727 North 7th Street
Suite 407
Phoenix, Arizona 85014

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 **5 North Fifth Hotel, 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 _____, 201_ ("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").

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 _____, 201_, and shall expire on the twenty-fifth anniversary thereof; (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 leasehold mortgagees, including without limitation, the following provisions:

§ 16.3 Rights of Lenders. Landlord is aware that Tenant has obtained and will obtain financing or refinancing for the acquisition, development and/or construction of the Improvements and other improvements to be constructed on the Premises, in whole or in part, from time to time, by one or more persons (individually a "Lender", and collectively the "Lenders"), and that Tenant will secure Tenant's obligations to such Lenders by means of 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, collateral assignment or otherwise ("Leasehold Mortgage"). Senior Lender, as primary lender, and the City, as subordinated lender, shall each constitute a Lender, and the Existing Deeds of Trust shall each constitute a Leasehold Mortgage. Notwithstanding anything in this Lease to the contrary, until such time, if any, that the Senior DOT is satisfied and released of record or the beneficiary under the Senior DOT gives written notice to Landlord that said Senior DOT has been satisfied, the rights, privileges, elections and benefits of "Lender" under this Lease shall only be enforceable by Senior Lender in its capacity as the beneficiary under the Senior DOT, and all references in this Lease to "Lender" shall be deemed to refer only to Senior Lender. At such time, if any, that the Senior DOT has been satisfied and released of record but the Senior Adjacent DOT remains of record, then the rights and priorities set forth in this Section 16.3 shall apply to the Senior Lender in its capacity as beneficiary under the Senior Adjacent DOT, such that the rights, privileges, elections and benefits of "Lender" under this Lease shall only be enforceable by Senior Lender before any other Lender.

§ 16.4 Notices and Recognition of Lenders. In the case of an Event of Default, Landlord shall provide notice of the Event of Default, at the same time notice is provided to Tenant pursuant to Article 17, to all Lenders previously designated by Tenant to receive such notice (including Senior Lender and the City, the "Designated Lenders") whose names and addresses were previously provided by written notice to Landlord in accordance with Article 20. No notice given by Landlord to Tenant shall be binding upon or affect the Designated Lenders unless a copy of the Notice shall be given to the Designated Lenders pursuant to this section. Landlord shall give Tenant copies of any such notice provided to the Designated Lenders, and, unless Tenant notifies Landlord that the Designated Lenders names or addresses are incorrect (and provides Landlord with the correct information) within three (3) business days after Tenant receives its copies of such notice from Landlord, Landlord shall be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Tenant may provide notices to other Lenders. If Lender cures the Event of Default and/or assumes Tenant's position with respect to this Lease, Landlord agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Tenant under this Lease. Landlord shall, at any time upon reasonable request by Tenant, provide to any Lender an estoppel certificate or other document evidencing that this Lease is in full force and effect and that no Event of Default by Tenant exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Lender, Landlord will enter into a separate non-disturbance agreement with such Lender, consistent with the provisions of this § 16.4.

§ 16.5 Additional Covenants for the Benefit of Lender.

A. 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 the Lender without its prior written consent.

B. Lender shall have the cure rights set forth in this Subsection 16.5. If Tenant fails to cure a default within the applicable cure period, then the Lender shall have the right for a period of sixty (60) days after the later of (i) written notice to the

Lenders 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 Lender may reasonably require to effect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Lender shall thereby and hereby be subrogated to the rights of Landlord. Landlord agrees that the Lender shall not be required to pay default interest to cure any payments defaults by Tenant unless so required by a third party. The Lender shall have the right to enter upon the Premises to render such performance.

C. In case of an Event of 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 Lender without taking possession of the Premises, in such Lender's reasonable opinion, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

1. the Lender 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 Lender from obtaining such possession); or

2. the Lender 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 Lender from obtaining such possession).

The Lender shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to subsection C.1 above, or to continue to prosecute foreclosure proceedings pursuant to subsection C.2 above, if and when such Event of Default has been cured. If a Lender, its nominee or any successor to Lender or lender's nominee (including a purchaser at a foreclosure sale, trustee's sale or deed in lieu of foreclosure) succeeds to Tenant's leasehold estate hereunder, 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.

D. If any Lender 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 15.5.C above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

E. If Lender, its nominee or any successor for Lender or lender's nominee (including a purchaser at a foreclosure sale, trustee's sale or deed in lieu of foreclosure) succeeds to Tenant's leasehold estate hereunder or under a new Lease under Section 16.7 below, the parties agree and acknowledge such Lender shall not be liable or

responsible for and shall not be deemed to have assumed liability for any other prior actions, omissions, defaults, breaches or other events caused by or relating to the original Tenant. Rather, such successor Tenant shall only be liable and responsible for acts, omissions, defaults, breaches or events occurring while it is the Tenant hereunder. Nothing in this Section 16.5.E releases the original Tenant from liability arising from events during Tenant's operation of the Premises, nor limits or otherwise modifies Landlord's remedy under Section 17.3 to terminate this Lease for certain Events of Default, subject to Lender's right to cure an Event of Default in accordance with the provisions of this Section 16.5, and the right to enter into a new lease in accordance with the provisions of Section 16.7.

§ 29.14. Senior Lender; 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 Senior Lender for the purpose of implementing the mortgagee-protection provisions contained in this Lease, or allowing that Senior Lender have reasonable means to protect or preserve its lien, including the Senior DOT or Senior Adjacent DOT (as applicable), 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 Senior Lender. 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 Senior Lender or any successor to Senior Lender (including a purchaser at a foreclosure sale, trustee's sale or deed in lieu of foreclosure) 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, Senior Lender or such successor shall have the right to do so without consent of Landlord and, from and after the time Senior Lender or such successor takes such title, Landlord shall recognize Senior Lender or its successor as the Tenant under this Lease.

4. The Lease (Section 16.7) further grants the most senior beneficiary under the Existing Deeds of Trust the right, subject to the satisfaction of certain conditions precedent, to a new lease on 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.

[Signatures Appear on Following Page]

This Memorandum has been executed as of the date first set forth above.

Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

STATE of ARIZONA)
) ss.
County of PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____ 201__, by _____, the _____ of Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona, on behalf of the district.

Notary Public

My Commission Expires:

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

By: _____
Matthew Scott Stiteler, Manager

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by Matthew Scott Stiteler, as manager of 5 North Fifth Hotel, LLC, an Arizona limited liability company, for and on behalf of the company.

Notary Public

My commission expires:

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, if reasonably available for a commercially-reasonable premium, acts of terrorism. Unless otherwise agreed in writing by Landlord, such insurance shall be for the full insurable value of the Premises. 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 such contents may be obtained.

(f) 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.

(g) 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, and (ii) shall provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to Landlord. 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:

- (a) Funeral parlor; cemetery; crematorium.
- (b) Automobile dealership; boat dealership; body and fender shop; motor vehicle storage facility; boat storage facility.
- (c) Flea market.
- (d) Any establishment primarily engaged in the business of selling, exhibiting or distributing pornographic or obscene materials; a video store that sells or rents videos that are rated 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.
- (e) Business of selling or exhibiting materials or paraphernalia for use with illicit drugs; a so-called "head shop."
- (f) 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.
- (g) 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).
- (h) House of worship.
- (i) School (excluding instructional classes incidental to another allowed use).
- (j) Any business that cashes checks or makes short-term or "payday advance" type loans; this does not 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.

EXHIBIT E

(Form of Special Warranty Deed)

When recorded mail to:

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 _____, the GRANTEE, the real property situated in Pima County, Arizona, legally described on Exhibit "1", attached hereto and by reference incorporated herein; subject to all taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, and all matters which an accurate survey or physical inspection of the property would disclose. The Grantor hereby binds itself 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