

TERMINATION OF CONTRACT AND MODIFICATION AGREEMENT

Effective Date: June 7, 2017

Owner: 5 North 5th Hotel, LLC
2140 West Moore Road
Tucson, Arizona 85755
Attention: Ms. Chris Hodgson
Telephone: 520-229-3451
Telecopy: 520-498-6458

Rio Nuevo: Rio Nuevo Multipurpose Facilities District
52 West Congress Street
Tucson, Arizona 85701
Attention: Mark Irvin
Telephone: 520-620-1833
Telecopy: 520-620-1830

ARTICLE 1. BACKGROUND

1.1 Purchase Contract. Owner and Rio Nuevo ("Party(ies)") are parties to that Sale Agreement and Escrow Instructions dated September 12, 2014, as amended by First Amendment to Sale Agreement and Escrow Instructions dated August 25, 2015 (collectively, the "Purchase Contract"). Capitalized terms used in this Termination of Contract and Modification Agreement ("Agreement") but not defined in this Agreement will have the meanings ascribed in the Purchase Contract. Pursuant to the Purchase Contract, Rio Nuevo agreed to purchase from Owner the "Property", consisting of that parking garage located at the northwest corner of 5th Avenue and Broadway Street, Tucson, Arizona, on which Owner is currently constructing a hotel facility and retail premises, along with such garage. In consideration of Rio Nuevo's covenants and agreements described in the Purchase Contract ("Obligations"), Owner has constructed the garage on the Property and, in connection therewith, has made financial and other commitments to third parties, including the City of Tucson ("City") and Grandpoint Bank, a California corporation, doing business in Arizona as the Bank of Tucson ("Lender"). Without limiting the foregoing, Owner's credit facilities with Lender require that the net Purchase Price under the Purchase Contract be applied in partial satisfaction of Owner's obligations to Lender.

1.2 Termination Request. As a result of business obligations and opportunities imposed on and available to Owner and Rio Nuevo, the Parties wish to modify the Obligations to allow Rio Nuevo to take advantage of additional business opportunities. Accordingly, Owner and Rio Nuevo wish to terminate the Purchase Contract and the Escrow created thereby, including Owner's rights to specific performance thereunder and all of their other rights and obligations under the Purchase Contract. Owner and Rio Nuevo are willing to terminate the Purchase Contract on the terms and conditions of this Agreement.

1.3 Owner Development. In addition to the Property, and the hotel and retail facilities associated therewith, Owner owns, as part of the Parcel, those certain retail establishments known as 256-278 East Congress, Tucson, Arizona ("200 Block"). Conditioned

on the effectiveness of this Agreement, including Articles 2 and 3 below, Owner anticipates renovating, improving and refurbishing the 200 Block, for an estimated cost of \$3,225,000, the effect of which will be to increase business activities and thus, transaction privilege taxes in which Rio Nuevo is currently entitled to share.

ARTICLE 2. TERMINATION; CONDITIONS

2.1 Termination. Expressly conditioned upon the satisfaction or waiver of the Conditions defined below, as such satisfaction or waiver shall be evidenced by written notice from Owner to Rio Nuevo and Escrow Agent (“Termination Notice”), Owner and Rio Nuevo agree that the Purchase Contract shall terminate, neither party shall have any further rights or obligations thereunder, and the Initial and Additional Earnest Money shall be immediately delivered by Escrow Agent one half to Rio Nuevo and one half to Owner, as consideration for Owner’s efforts and expenses incurred in connection with the Conditions. Without limiting the foregoing, Owner and Rio Nuevo shall not execute and deliver the Lease and the Memorandum, and Rio Nuevo shall have no further interest in the Property. Rio Nuevo and Owner agree to execute and deliver any additional documents reasonably requested by the other or by Escrow Agent to confirm the same.

2.2 Conditions. The termination of the Purchase Contract described in Section 2.1 shall be effective only upon:

(a) The satisfaction or waiver, in Owner’s commercially reasonable discretion, of the following conditions (“Conditions”): (i) the board of Rio Nuevo has approved this Agreement and the obligations of Rio Nuevo hereunder (including pursuant to Article 3); (ii) the City (a) agrees to accept title to the Property, and lease the Property to Owner, pursuant to that Land and Improvements Lease attached as Exhibit “B” to that Broadway & Fifth Development Agreement dated November 5, 2014, between Owner and City, and (b) as lender to Owner and lienholder on the Property, consents to the transactions described herein pursuant to Owner’s loan agreements with City; and (iii) Lender has agreed to the foregoing, and has modified its loan agreement with Owner to reflect its non-receipt of the net Purchase Price pursuant to the Purchase Contract, on terms and conditions satisfactory to Lender.

(b) The completion of a third-party economic impact analysis that quantifies the economic and fiscal benefits resulting from Rio Nuevo’s obligations under this Agreement the conclusions of which, in Rio Nuevo’s commercially reasonable discretion, support Rio Nuevo’s fulfillment of such obligations.

(c) The full and complete execution of that certain “Modification Agreement” among Depot Plaza Investors, LLC, Owner and Rio Nuevo dated [6/7/17].

ARTICLE 3. SETTLEMENT PROVISIONS

3.1 Sinking Fund. Commencing upon the full execution of this Agreement (“Commencement Date”), and until the receipt by Owner of amounts equal to the Rebate Cap (as defined below), Rio Nuevo shall establish and maintain a “Sinking Fund” into which shall be deposited the Applicable Percentage (as defined below) of the gross sales tax proceeds (“Rebates”) actually received by Rio Nuevo from the Arizona Department of Revenue

("ADOR") as a direct result of payments actually made by all owners, contractors, tenants, sub-tenants or other occupants of the Parcel (each a "Tenant") required to pay transaction privilege taxes to ADOR. For the purposes of this Section, the "Applicable Percentage" shall mean (i) from the Commencement Date until July 1, 2025, 100%, and (ii) from and after July 2, 2025, expressly conditioned on the Arizona legislature extending the Rio Nuevo TIF District beyond such date, 50%.

(a) To allow Rio Nuevo to track these amounts and provide Owner with the benefit of the Rebates, Owner shall require each and all Tenants to execute a form of lease or other use agreement with respect to that portion of the Parcel being utilized by the Tenant (a "Tenant Lease") which Tenant Lease shall require each Tenant to provide Owner with Tenant's eight digit "TPT License Number" and the business name associated with that TPT License Number.

(b) The Rebates shall be held in a separate FDIC insured account established by Rio Nuevo solely for the purpose described in this Article 3 and shall not be commingled with any other funds or monies of Rio Nuevo. Subject to the approval of Lender, the Rebates shall belong to Rio Nuevo, and Owner shall have no interest therein, except it shall have a contractual right to receive such amounts pursuant to this Article 3.

(c) Commencing on the fourth full month after the Commencement Date and continuing quarterly thereafter until receipt by Owner of amounts equal to the Rebate Cap (defined below) Rio Nuevo shall provide Owner with a summary of the Rebates received by Rio Nuevo from ADOR during the preceding three months ("Quarterly Summary"). Upon the delivery of the executed Termination Notice to Escrow Agent and the Owner's conveyance of title of the Parcel to the City ("Transfer Date"), Rio Nuevo shall pay to Owner from the Sinking Fund an amount equal to all Rebates arising from the Parcel during the period between the Commencement Date and the Transfer Date ("Initial Period"). Thereafter, with each Quarterly Summary Rio Nuevo shall pay to Owner the amount of all of the Rebates from the Sinking Fund reflected in such Quarterly Summary (less any amounts previously paid) until Rio Nuevo has disbursed to Owner in the aggregate pursuant to this Article 3 the sum of (i) \$4,300,000.00, plus (ii) the costs incurred by Owner ("Renovation Costs") to renovate, refurbish and improve the portion of the Parcel constituting the 200 Block (the "Rebate Cap") which Rebate Cap shall in no event exceed \$7,750,000. Owner will provide to Rio Nuevo not less than quarterly a summary of the Renovation Costs for Rio Nuevo's reasonable review and approval. Following completion of such improvements, Rio Nuevo and Owner shall set forth in writing the total amount of the Rebate Cap. Upon the full and timely payment of Rebates up to the Rebate Cap, the Sinking Fund shall terminate, and any remaining balance shall be paid to Rio Nuevo's general operating fund.

ARTICLE 4. MISCELLANEOUS

4.1 Attorneys' Fees. If any action is brought by either Owner or Rio Nuevo regarding its rights under this Agreement, the prevailing party shall be entitled to attorney fees in a reasonable amount, expenses, and court costs both at trial and on appeal.

4.2 Assignment. This Article shall inure to the benefit of and be binding upon the successors and assigns of the parties. Owner shall retain the right to receive Rebates

regardless of the status of title or ownership of any or all of the Parcel unless Owner expressly assigns its rights to receive the Rebates provided, however, such right shall only apply to those portions of the Parcel that continue to be owned by the City or other governmental entity. Any assignment by Owner shall be subject to the approval of Rio Nuevo, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Owner may, with notice to Rio Nuevo but without Rio Nuevo's consent, assign this Agreement to any affiliate of Owner. Notwithstanding the preceding sentences, Rio Nuevo acknowledges that financing for the Parcel has been provided by Lender, and that Lender (or any successor lender) may request a collateral assignment of Owner's rights under this Article as part of its collateral for its loan to Owner. Rio Nuevo agrees that such collateral assignments are permissible. Nothing contained in this Section shall be deemed to prohibit, restrict or limit in any way the right of a lender to take title to all or any portion of the Parcel or Owner's leasehold interest therein, pursuant to a foreclosure proceeding, trustee's sale, or deed in lieu of foreclosure. Rio Nuevo shall, at any time upon request by Owner or Lender (or any successor lender), provide to any such lender an estoppel certificate, acknowledgement of collateral assignment, or other document evidencing that this Section is in full force and effect, that it has not been amended or modified (or, if appropriate, specifying the amendment or modification), and that no non-performance by Owner exists under this Agreement (or, if appropriate, specifying the nature and duration of any existing non-performance), and certifying to such other matters reasonably requested by Owner or Lender. Upon request by Lender or successor lender, Rio Nuevo will enter into a separate assumption or similar agreement with the Lender consistent with the provisions of this paragraph.

4.3 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement must be in writing and will be deemed to have been delivered, received, and effective: (i) on the business day of service, if served by hand-delivery; or (ii) on the date that is one (1) business day after deposit of the notice properly addressed to the party at the address shown on the cover page to this Agreement, if sent by overnight Federal Express or equivalent overnight delivery; or (iii) three (3) business days after deposit of the notice properly addressed, if sent by U.S. certified mail, return-receipt requested. The addresses, telephone numbers, and facsimile numbers shown on the first page of this Agreement are the places and numbers for delivery of all notices. Any party may change the place or number for delivery of notice by notifying all other parties.

4.4 Governing Law and Exclusive Jurisdiction. This Agreement is to be governed by and construed and enforced in accordance with the laws of the State of Arizona. Any action brought to interpret, enforce, or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona, Pima County, or in the United States District Court for the District of Arizona, Tucson Division. All parties irrevocably consent to this jurisdiction and venue and agree not to transfer or remove any action commenced in accordance with this Agreement.

4.5 Construction. The terms and provisions of this Agreement represent the results of negotiations between Rio Nuevo and Owner, neither of which have acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Rio Nuevo and Owner each waive the application of any rule of law which states that ambiguous or conflicting terms or provisions are to be interpreted or

construed against the party whose attorney prepared the Agreement or any earlier draft of the Agreement.

4.6 Amendment; Waiver. No supplement, modification, or amendment of this Agreement will be binding unless in writing and executed by the parties. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Time is of the essence in the performance of each and every term of this Agreement.

4.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original, but all of which together will constitute one binding agreement and instrument.

4.8 Severability. If any of the provisions of this Agreement or the applicability of any provision to a specific situation is held invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable in a manner consistent with the intent of this Agreement, and the validity and enforceability of all other provisions of this Agreement and all other applications of the enforceable provisions will not be affected by the invalidity or unenforceability of any provision, so long as the Agreement may still be enforced in a manner consistent with the intent of Owner and Rio Nuevo.

4.9 Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511. The District may cancel this Agreement without penalty or further obligations by the District or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the District or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement with respect to the subject matter of the Agreement.

4.10 Israel Boycott Certification. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

SIGNATURES ON FOLLOWING PAGE(S)

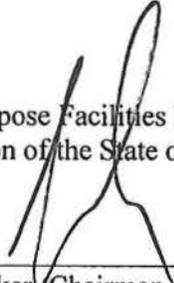
Owner:

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

By: 
Its manager

Rio Nuevo:

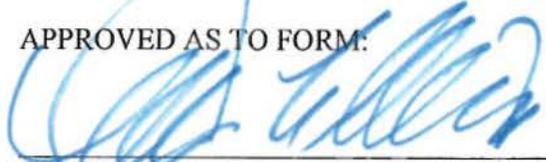
Rio Nuevo Multipurpose Facilities District,
a political subdivision of the State of Arizona

By: 
Fletcher McCusker, Chairman

ATTEST:


Mark Irvin, Secretary

APPROVED AS TO FORM:


Mark Collins, Attorney to Rio Nuevo