

**TRIPLE NET  
GOVERNMENT  
PROPERTY LEASE**

**BY AND BETWEEN**

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

**“LANDLORD”**

**AND**

**THE CADENCE APARTMENTS, LLC**  
a Delaware limited liability company

**“TENANT”**

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1 — LEASE OF THE PREMISES .....</b>	<b>2</b>
§ 1.1. PREMISES .....	2
§ 1.2. TERM .....	2
§ 1.3. TENANT’S TERMINATION RIGHT .....	2
<b>ARTICLE 2 — DEFINITIONS.....</b>	<b>3</b>
§ 2.1. DEFINITIONS.....	3
<b>ARTICLE 3 — RENT .....</b>	<b>5</b>
§ 3.1. NET RENT .....	5
§ 3.2. RENT ABSOLUTELY NET .....	5
§ 3.3. NO RELEASE OF OBLIGATIONS.....	5
§ 3.4. LEASEHOLD MORTGAGE OF PREMISES.....	6
<b>ARTICLE 4 — ADDITIONAL PAYMENTS.....</b>	<b>7</b>
§ 4.1. “ADDITIONAL PAYMENTS” DEFINED .....	7
§ 4.2. CONTEST .....	8
§ 4.3. ASSESSMENT REDUCTION .....	9
§ 4.4. HOLD HARMLESS .....	9
§ 4.5. GOVERNMENT PROPERTY LEASE EXCISE TAX .....	9
§ 4.6. COST OF ECONOMIC STUDY .....	9
<b>ARTICLE 5 — INSURANCE .....</b>	<b>9</b>
§ 5.1. TENANT OBLIGATION TO INSURE .....	9
§ 5.2. FAILURE TO MAINTAIN INSURANCE .....	9
<b>ARTICLE 6 — WASTE; TITLE.....</b>	<b>10</b>
§ 6.1. WASTE .....	10
§ 6.2. TITLE .....	10
§ 6.3. SURVIVAL OF PROVISIONS.....	10
<b>ARTICLE 7 — LANDLORD’S PERFORMANCE FOR TENANT.....</b>	<b>10</b>
§ 7.1. CURES--RIGHTS, COSTS, AND DAMAGES .....	10
<b>ARTICLE 8 — USES AND MAINTENANCE .....</b>	<b>11</b>
§ 8.1. ABSENCE OF WARRANTIES.....	11
§ 8.2. PERMITTED USES .....	11
§ 8.3. MAINTENANCE AND REPAIRS.....	11
<b>ARTICLE 9 — COMPLIANCE.....</b>	<b>12</b>
§ 9.1. TENANT OBLIGATIONS.....	12
§ 9.2. CERTIFICATE OF OCCUPANCY .....	12
<b>ARTICLE 10 — CONSTRUCTION AND OPERATION OF PROJECT.....</b>	<b>12</b>

§ 10.1. THE PROJECT .....	12
§ 10.2. GOVERNMENT APPROVALS .....	13
§ 10.3. COMPLETION REQUIREMENTS .....	13
§ 10.4. OWNERSHIP OF BUILDINGS AND IMPROVEMENTS.....	13
§ 10.5. TENANT’S MANAGEMENT AND OPERATING COVENANT.....	14
ARTICLE 11 — INTENTIONALLY OMITTED.....	14
ARTICLE 12 — IMPAIRMENT OF LANDLORD’S TITLE .....	14
§ 12.1. NO LIENS .....	14
§ 12.2. DISCHARGE .....	15
§ 12.3. NO IMPLIED CONSENT .....	15
§ 12.4. NO AGENCY INTENDED .....	15
ARTICLE 13 — INSPECTION .....	15
§ 13.1. INSPECTION AND ENTRY .....	15
ARTICLE 14 - INDEMNIFICATION .....	15
§ 14.1. INDEMNIFICATION OF LANDLORD .....	15
§ 14.2. INDEMNIFICATION OF TENANT .....	17
§ 14.3. SURVIVAL OF INDEMNIFICATION OBLIGATIONS.....	17
ARTICLE 15 — DAMAGE OR DESTRUCTION .....	17
§ 15.1. TENANT REPAIR AND RESTORATION .....	17
§ 15.2. PAYMENT OF INSURANCE PROCEEDS.....	18
§ 15.3. FAILURE TO COMMENCE REPAIRS .....	18
§ 15.4. LEASE OBLIGATIONS CONTINUE .....	18
§ 15.5. SUBSTANTIAL DAMAGE AT END OF TERM .....	18
ARTICLE 16 — CONDEMNATION .....	18
§ 16.1. TOTAL, SUBSTANTIAL, OR UNUSABLE REMAINDER.....	18
ARTICLE 17 — ASSIGNMENT AND SUBLETTING.....	19
§ 17.1. ASSIGNMENT BY TENANT .....	19
§ 17.2. NOTICE OF PROPOSED ASSIGNMENT OR SUBLEASE .....	20
§ 17.3. LANDLORD’S CONSENT.....	20
§ 17.4. RENT FROM ASSIGNEE.....	20
§ 17.5. ASSIGNMENT BY LANDLORD.....	20
§ 17.6. SUBLEASE BY TENANT .....	20
§ 17.7. ENCUMBRANCE OF PREMISES.....	21
ARTICLE 18 — DEFAULT BY TENANT .....	21
§ 18.1. EVENTS OF DEFAULT .....	21
§ 18.2. NOTICE AND TERMINATION .....	22
§ 18.3. TENANT LIABILITY .....	22
§ 18.4. NO IMPLIED WAIVERS.....	23
§ 18.5. REMEDIES CUMULATIVE .....	23
§ 18.6. LATE CHARGE .....	23

§ 18.7. SPECIFIC PERFORMANCE.....	23
§ 18.8 SELF-HELP .....	23
ARTICLE 19 — DEFAULT BY LANDLORD .....	23
§ 19.1. LIMITATIONS OF LANDLORD’S LIABILITY; REMEDIES .....	23
ARTICLE 20 — UNENFORCEABLE TERMS.....	24
§ 20.1. SEVERABILITY .....	24
ARTICLE 21 — NOTICES .....	24
§ 21.1. NOTICES .....	24
ARTICLE 22 — CONDITION .....	25
§ 22.1. CONDITION OF PREMISES .....	25
§ 22.2 AS IS.....	25
ARTICLE 23 — QUIET ENJOYMENT .....	26
§ 23.1. QUIET ENJOYMENT.....	26
§ 23.2. AGREEMENT FOR NON-DISTURBANCE OF SUBTENANTS .....	26
ARTICLE 24 — ESTOPPEL.....	27
§ 24.1. ESTOPPEL CERTIFICATES .....	27
ARTICLE 25 — CONSENTS.....	27
§ 25.1. PARTIES AND NOTICE .....	27
§ 25.2. NO UNREASONABLE WITHHOLDING .....	28
ARTICLE 26 — LANDLORD NOT LIABLE .....	28
§ 26.1. LIMITATION OF LIABILITY .....	28
ARTICLE 27 — ENFORCED DELAY .....	28
§27.1. ENFORCED DELAY; EXTENSION OF TIME OF PERFORMANCE .....	28
§27.2. ENFORCED DELAY; EXCEPTIONS AND NOTICE .....	29
ARTICLE 28 — COMPLIANCE WITH ENVIRONMENTAL LAWS.....	30
§ 28.1. DEFINITIONS.....	30
§ 28.2. COMPLIANCE.....	31
§ 28.3. INDEMNIFICATION.....	31
§ 28.4. NONCOMPLIANCE .....	33
ARTICLE 29 — OPTION TO PURCHASE PREMISES.....	33
§ 29.1. OPTION TO PURCHASE .....	33
§ 29.2. EXERCISE OF OPTION .....	33
§ 29.3. CONVEYANCE OF PREMISES.....	34
ARTICLE 30 — MISCELLANEOUS .....	35
§ 30.1. LANDLORD’S RIGHT OF CANCELLATION .....	35
§ 30.2. LEGAL ACTIONS .....	35

<b>§ 30.3. MEMORANDUM .....</b>	<b>35</b>
<b>§ 30.4. ENTIRE AGREEMENT .....</b>	<b>35</b>
<b>§ 30.5. CAPTIONS .....</b>	<b>35</b>
<b>§ 30.6. EXECUTION AND DELIVERY .....</b>	<b>35</b>
<b>§ 30.7. SINGULAR AND PLURAL, GENDER .....</b>	<b>35</b>
<b>§ 30.8. MULTIPLE PARTIES .....</b>	<b>36</b>
<b>§ 30.9. NO THIRD PARTY BENEFICIARIES.....</b>	<b>36</b>
<b>§ 30.10. EXHIBITS AND INCORPORATION .....</b>	<b>36</b>
<b>§ 30.11. ATTORNEYS' FEES .....</b>	<b>36</b>
<b>§ 30.12. TIME OF ESSENCE .....</b>	<b>36</b>
<b>§ 30.13. BROKER'S COMMISSION AND REPRESENTATION.....</b>	<b>36</b>

**TRIPLE NET  
GOVERNMENT  
PROPERTY LEASE**

THIS LEASE ("Lease") is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district, having its office at 1703 E. Broadway Blvd., Tucson, AZ 85719 (hereinafter "Landlord"), and **THE CADENCE APARTMENTS, LLC**, a Delaware limited liability company, having its office at 1095 E. 2100, Suite 110, Salt Lake City, UT 84106 (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.** Tenant is in the process of purchasing, and upon the Commencement Date of this Lease Landlord will own real property more particularly described in Exhibit A attached hereto (the "Land") and related improvements. The improvements consist of approximately two large buildings, one at 345 Congress Street, Units 6, 7, 8 and 9, Tucson, AZ 85701, consisting of approximately 67,285 applicable square feet (the "Railyard Building") and the other at 350 E. Congress Street, Units 1 and 2, Tucson AZ 85701 consisting of approximately 107,178 applicable square feet (the "Greyhound Building"). The buildings are currently student housing but will be converted to market rate apartments. The Greyhound Building will contain 157 one-, two- and three-bedroom apartments, and the Railyard Building will contain 99 studio, one-, two- and three-bedroom apartments. For purposes of this Lease, the improvements do not include the current retail units in the Greyhound Building and Railyard building, but Tenant may also contemplate adding retail space in the future. The renovated apartments, all common areas of the Greyhound Building and the Railyard Building, any related landscaping improvements, and the future retail space, if developed, are collectively referred to herein as the "Improvements." The Land and Improvements constitute the "Premises."

**C.** Tenant anticipates initial expenditures of approximately \$10,145,285.00 (the "Initial Construction Costs"), by Tenant to remodel and repurpose the Premises. Upon obtaining a Certificate of Occupancy or Letter of Completion for the Improvements, but prior to opening for business, Tenant will convey the Premises to Landlord pursuant to the terms hereof. After conveyance of Premises to Landlord, 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).

**D.** The Premises are located within the special taxing district limits of Landlord and in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 *et seq.*) (the "CBD"). More than one

year has lapsed from the City's designation of the CBD, and Landlord has determined (based on an estimate of an independent third party) that within the term of this Lease, the economic and fiscal benefit to the State, City of Tucson, Pima County, and the Landlord will exceed the benefits received by Tenant under the Lease.

E. Tenant may obtain construction and development financing or a line of credit (a "Construction and Development Loan") from a financial institution or other third-party lender (a "Construction and Development Lender") to cover some or all anticipated Construction Costs, including but not limited to tenant improvement costs. Tenant may also obtain a permanent loan either to replace a Construction and Development Loan or otherwise refinance the Premises (a "Permanent Loan"). If Tenant obtains a Construction and Development Loan or a Permanent Loan, the parties intend that it will be treated as a Leasehold Mortgage pursuant to Section 3.4 below.

## **ARTICLE 1 LEASE OF THE PREMISES**

**§ 1.1. Premises.** Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The Premises are subject to, and further described by, the following:

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

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

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

**§ 1.2. Term.** Although this Lease, and the obligations of Landlord and Tenant as set forth in this Lease shall commence on the date of execution of this Lease, the term of this Lease shall commence on the City's issuance of a Certificate of Occupancy or Letter of Completion for the Premises (whether temporary or permanent and for a portion or all of the Premises) ("Commencement Date") and, subject to Tenant's Purchase Option and Termination Right, shall expire at 12:00 midnight on the last day of the Rental Period, as hereafter defined ("Termination Date"), unless this Lease is sooner terminated as hereinafter provided ("Term"). The Commencement Date and the Termination Date shall be set forth in the Amendment to Lease substantially in the form attached hereto as Exhibit B.

**§ 1.3. Tenant's Termination Right.** Notwithstanding any provision of this Lease to the contrary but subject to the exercise of the Purchase Option set forth in Article 29 below, Tenant

or any approved or permitted successor to Tenant may terminate this Lease at any time upon not less than 60 days' written notice to Landlord, or as otherwise provided herein.

## **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), 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 Paragraph D.

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

“Commencement Date”: As defined in § 1.2.

“Commencement of Construction” shall be deemed to have occurred when labor is first provided, or equipment or materials are first furnished, to the Premises after issuance of the first building permit.

“Completion Date”: The date upon which renovation of the Improvements is completed as evidenced by the issuance of a Certificate of Occupancy for the Improvements.

“Construction Costs”: As defined in Recital Paragraph C.

“Construction and Development Lender”: As defined in Recital Paragraph E.



“Construction and Development Loan”: As defined in Recital Paragraph E.

“Deed of Trust” means any deed of trust or mortgage securing obligations due to a Leasehold Mortgagee and encumbering Tenant’s leasehold interest in the Premises.

“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.

“Enforced Delays”: As defined in § 27.1.

“Event of Default”: As defined in § 18.1.

“Impositions”: As defined in § 4.1.

“Improvements”: The renovated apartments, all common areas of the Greyhound Building and the Railyard Building, any related landscaping improvements, and the future retail space, if developed.

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

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

“Lease”: means this Triple Net Government Property Lease.

“Leasehold Mortgage”: As defined in Section 3.4(A).

“Lender”: The Construction and Development Lender and any subsequent Leasehold Mortgagee (including but not limited to any lender for a Permanent Loan) and their successors or assigns.

“Monetary Default”: As defined in § 18.1 (A).

“Net Rent”: As defined in § 3.1 (A).

“Option Period”: As defined in §29.2.

“Premises”: As defined in Recital Paragraph B.

“Purchase Option”: As defined in §29.1.

“Rental Period”: The period beginning on the Commencement Date and ending 25 years from the first day of the month following the date of issuance of the Certificate of Occupancy, subject to the Purchase Option exercised by Tenant in accordance with § 1.3 and Article 29.

“Replacement Deed of Trust”: As defined in 3.4 (a).

“Second Notice”: As defined in § 18.2.

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

“Tenant Obligations”: As defined in § 9.1.

“Term”: As defined in § 1.2.

“Termination Right”: As defined in § 1.3.

### **ARTICLE 3 RENT**

#### **§ 3.1. Net Rent.**

**A. Base and Adjustments.** Tenant agrees to make a lump sum rent payment of \$100 in rent for the Premises from the Effective Date until the Commencement Date (“Initial Rent”). From and after the Commencement Date, Tenant shall pay to Landlord, in such United States of America currency as at the time of payment shall be legal tender for the payment of public and private debts at the addresses specified or furnished pursuant to § 21.1, during the Rental Period a net annual rental (“Net Rent”) in the amount of \$100.00 per annum. Tenant may pre-pay the Net Rent in advance for the entire Term or a portion of the Term.

**B. Annual Installments.** All payments of Net Rent shall be made in annual installments in advance, without notice, beginning on the first day of the first month following the Commencement Date and in like fashion each year thereafter. Alternatively, Tenant may pre-pay Net Rent for the entire Rental Period before the Commencement Date.

**§ 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, tax on rent, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, except as hereinafter otherwise specifically provided in this Lease. Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth. All costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the Rental Period shall be paid by Tenant. Landlord shall be indemnified and saved harmless by Tenant from and against all 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 or operate the Premises) shall relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease.

### **§ 3.4. Leasehold Mortgage of Premises**

**A.** Tenant and any Successor Owner (as hereafter defined) of all or any portion of the Premises, is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest (or any Successor Owner's interest) under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust, collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee." The Parties acknowledge and agree that upon the Commencement Date and as long as the Landlord holds fee title to the Premises, any existing deed of trust or mortgage encumbering title to the Premises will be amended to become a Leasehold Mortgage and encumber only the Tenant's leasehold interest in the Property (instead of fee title), but that upon the expiration or termination of this Lease and reversion of the Premise's title to Tenant, any Leasehold Mortgage will again encumber fee title to the Premises. All protections and notices required by this Lease to be given to a Leasehold Mortgagee shall be extended and given to the beneficiaries under any existing deed of trust or mortgage encumbering the Premises. Landlord agrees to sign such agreements and acknowledgements as are consistent with this Agreement and reasonably required by a Leasehold Mortgagee in connection with a Leasehold Mortgage, including but not limited to by way of example, a recognition agreement, estoppel certificate, or subordination non-disturbance and attornment agreement.

**B.** A Leasehold Mortgagee may enforce such lien and acquire title to Tenant's leasehold estate in any lawful way including, pending foreclosure of such lien, the Leasehold Mortgagee may take possession of, develop, use and operate the Premises or applicable portion thereof, performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure or acquisition of the leasehold estate by deed in lieu of foreclosure, the Leasehold Mortgagee may, sell and assign the leasehold estate hereby created, subject to the Landlord's consent of such assignment of Tenant's rights and obligations pursuant to Article 17 hereof. Liability for the performance of Tenant's covenants and agreements hereunder shall attach to and be imposed upon any Leasehold Mortgagee or its successors and assigns during the term of ownership of the leasehold estate.

**C.** If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively "Notices") to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent in the manner set forth in Article 21. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

**D.** Landlord shall provide written notice of any Event of Default under this Lease to Leasehold Mortgagee at the same time notice is provided to Tenant and the Leasehold

Mortgagee shall have the cure rights given to Tenant hereunder. If Tenant fails to cure a default within the applicable cure period, then the Leasehold Mortgagee shall have the right for a period of sixty (60) days after the later of (i) written notice of the Leasehold Mortgagee 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 Leasehold Mortgagee may reasonably require to effect a cure. If the Leasehold Mortgagee cures an Event of Default on Tenant's behalf, Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. Landlord agrees that the Leasehold Mortgagee is not required to cure a Tenant default, but if the Leasehold Mortgagee chooses to cure the Tenant default, the Leasehold Mortgagee shall not be required to pay default interest to cure any payment defaults by Tenant. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance. Notwithstanding the foregoing, no payments made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment is due under the terms of this Lease and a Leasehold Mortgagee having made any payment to Landlord pursuant Landlord's wrongful, improper, or mistaken notice of demand shall be entitled to the return of any such payment or the relevant portion thereof.

**E.** Landlord shall upon request of a Leasehold Mortgagee execute, acknowledge and deliver to each Leasehold Mortgagee an instrument prepared at the sole cost and expense of Tenant, in form satisfactory to such Leasehold Mortgagee and Landlord, agreeing to all the provisions of this Section 3.4 and Section 24.1 hereof.

**F.** Any Leasehold Mortgagee shall have a right to intervene in and be made a party to any arbitration proceedings or legal proceedings by the parties hereto involving obligations under this Lease, and the Parties hereto do hereby consent to such intervention.

**G.** Tenant may delegate irrevocably to the Leasehold Mortgagee the authority to exercise any or all of Tenant's rights hereunder; provided that (i) the Leasehold Mortgagee agrees to perform all of Tenant's monetary obligations under this Lease; (ii) no such delegation shall be binding upon Landlord unless and until either Tenant or said Leasehold Mortgagee gives to Landlord a true copy of a written instrument effecting such delegation; and (iii) Landlord consents to such delegation pursuant to the terms of Article 17 hereof.

**H.** At Tenant's request, Landlord agrees to execute a form of landlord's lien waiver, reasonably acceptable to Landlord, with respect to Tenant's financing or refinancing of any personal property, furniture, furnishings, business or trade fixtures and equipment now or hereafter in or about the Premises, or any part thereof.

#### **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) 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 grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as “Impositions” and individually as an “Imposition”) provided, however, that:

A. if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the 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. If applicable, 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, unless otherwise requested by Landlord.

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

**§ 4.3. Assessment Reduction.** Tenant may, if it shall so desire, without expense to Landlord, endeavor at any time to obtain a lowering of an Imposition upon the Premises (other than the abatement of GPLET excise taxes, which is governed by Section 4.5 below) for the purpose of reducing the amount thereof. Tenant shall be authorized to collect any refund payable because 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.

**§ 4.4. Hold Harmless.** Landlord shall not be required to join in any action or proceeding referred to in §§ 4.2 or 4.3 (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed). Tenant hereby agrees to save Landlord harmless from all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

**§ 4.5. Government Property Lease Excise Tax.** As required under Arizona Revised Statutes Section 42-6206, Tenant is hereby notified of its 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 divesting Tenant of any interest in or occupancy of the Premises to which this Lease applies. 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.

**§ 4.6. Cost of Economic Study.** Upon the execution hereof, Tenant will pay to Landlord the cost incurred by Landlord to commission an economic study required by A.R.S. §42-6206 (B)(1)(b) to verify that the benefit to the City, County and State received as a result of Tenant's improvements to and operation of the Premises during the Rental Period would significantly exceed the benefits granted to Tenant hereunder.

## **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 and as may be required by any Leasehold Mortgagee.

**§ 5.2. Failure to Maintain Insurance.** If Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such

insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, within five days after written notice from 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. Waste.** Tenant shall not commit or suffer to be committed any material waste or impairment of the Premises.

**§ 6.2. Title.**

**A.** Upon issuance of a Certificate of Occupancy (defined below) and immediately prior to the Commencement Date, title to the Premises shall be conveyed to Landlord by a special warranty deed substantially in the form of Tenant's Special Warranty Deed attached hereto as Exhibit G pursuant to Section 10.4(b).

**B.** Notwithstanding the foregoing, the conveyance of title to the Premises to the Landlord and the Commencement Date shall not occur unless and until Tenant has provided Landlord with written notice on the date of Commencement of Construction so that the Landlord can perform and complete a Phase I environmental site assessment and any other due diligence studies that the Landlord deems appropriate before taking title to the Premises ("Inspection Period"). During the Inspection Period Tenant shall provide Landlord and its vendors and independent contractors with all necessary access to the Premises. If in its reasonable discretion Landlord determines that one or more due diligence studies render the Premises unacceptable, the Landlord may terminate this Lease with neither party having any liability to the other.

**§ 6.3. Survival of Provisions.** The provisions of this Article 6 shall survive the expiration or any termination of this Lease.

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

**§ 7.1. Cures--Rights, Costs, and Damages.** If Tenant fails to pay any Imposition or make any other payment required to be made under this Lease or defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition contained in this Lease, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account and at the expense of Tenant, immediately and without notice. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or

endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant. Upon written notice to Tenant and a 5 business day opportunity to cure, if any amount paid or advanced by Landlord pursuant to this Section 7.1 is not repaid, then interest shall accrue on any unpaid amount at the rate of 12% per annum 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 Completion Date, Tenant will accept the same in its condition or state in which it has been constructed without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Throughout the Rental Period, Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, 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.** Except as otherwise expressly prohibited by this Section 8.2, the Premises may be used and occupied by Tenant for any lawful purpose, subject to Tenant (or its subtenants) obtaining all required permits, licenses, and approvals from the applicable governmental entity. However, 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. 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 and Repairs.** 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 in good condition in accordance with City of Tucson 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. Nothing in this Lease shall be construed as constituting the consent of Landlord, express or implied, to the creation of any lien or encumbrance as a result of the performance of any labor or the furnishing of any materials or any specific improvements, alterations or repairs to the Premises or any part thereof by any contractor, subcontractor, laborer or materialman for the benefit of Tenant, nor as giving Tenant or any other person any right, power or authority to act as an agent of Landlord for the rendering of any services or the furnishing of any materials in any such manner as would give rise to the filing of mechanic's or materialman's liens or other claims against the Landlord's interest in the Premises or Landlord. Tenant shall keep the Premises free and clear of all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises, subject to the provisions of Article 12 and Tenant's right to contest and appeal any claim.

## **ARTICLE 9 COMPLIANCE**

**§ 9.1. Tenant Obligations.** Tenant shall assume and perform all obligations under any covenants, easements and agreements affecting the title to 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, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions, or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises. The foregoing shall apply whether or not such laws, acts, rules, requirements, orders, directions, ordinances and/or regulations require the making of structural alterations or the use or application of portions of the Premises for compliance therewith or interfere with the use and enjoyment of the Premises. Notwithstanding the foregoing, Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or prosecution for a crime.

**§ 9.2. Certificate of Occupancy.** Tenant shall obtain from the City a certificate of occupancy or a letter of completion with respect to the Premises, or a portion thereof, on or prior to the Commencement Date ("Certificate of Occupancy").

## **ARTICLE 10 CONSTRUCTION AND OPERATION OF PREMISES**

**§ 10.1. The Premises.** The Premises will consist of two multi-story buildings that will be market rate apartments, and potentially additional retail space. To the extent required by law, Tenant shall provide plans and specifications (the "Plans and Specifications") for any

renovation of the Premises to the City and obtain all necessary building and other permits for improvements described in the Plans and Specifications.

**§ 10.2. Government Approvals.** Tenant will also obtain any required approvals of the final Plans and Specifications by all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter. For all construction after the Certificate of Occupancy, if and to the extent applicable, Tenant shall comply with A.R.S. §34-101 *et. seq.* and Landlord's "Procurement Code" and shall indemnify Landlord from any failure to do so. Tenant's noncompliance with A.R.S. §34-101 *et. seq.* and the Procurement Code shall not be considered a default pursuant to Article 18.

**§ 10.3. Completion Requirements.** Tenant or its subtenants will expend the Construction Costs to complete the Premises in a good, careful, proper, and workmanlike manner substantially in accordance with:

- A. The approved Plans and Specifications; and
- B. All provisions of law 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; and
- C. Landlord, as fee owner of the Premises, agrees to reasonably cooperate, at no cost to Landlord, and sign documents and instruments if necessary for Tenant to obtain building permits and other consents necessary to complete Construction of the Premises.

**§ 10.4. Ownership of Buildings and Improvements.**

**A. From the Effective Date through Receipt of Certificate of Occupancy.** For the period beginning as of the Effective Date of this Agreement and until receipt of the Certificate of Occupancy for the Premises, title to the Premises shall be in the name of the Tenant.

**B. During Term.** Upon receipt of the Certificate of Occupancy, but prior to the Commencement Date, Tenant shall convey the Premises to Landlord by special warranty deed (the "Tenant's Special Warranty Deed"), subject to all Leasehold Mortgages, those title exceptions listed in Exhibit E attached hereto, and other title exceptions approved by Landlord in its discretion, not to be unreasonably withheld, conditioned or delayed ("Permitted Exceptions"). During the Rental Period, but subject to the rights of Leasehold Mortgagees and the Permitted Exceptions, fee title to the Land and all buildings and Improvements constructed on the Premises by Tenant pursuant to this Lease shall be in the Landlord.

**C. Ownership at Termination.** Unless Tenant has purchased the Premises during the Term pursuant to the Purchase Option set forth in Section 29 of this Lease, on the expiration or sooner termination of the Rental Period, Tenant shall exercise the Purchase Option within the Option Period defined and described in Section 29.2. Tenant agrees to and shall defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any claims and any encumbrances on such buildings and Improvements; provided,

however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. This Section 10.4 shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that (i) it is Tenant's obligation to exercise its Purchase Option upon expiration of the Lease or earlier, and (ii) it is Landlord's obligation to re-convey title to the Premises to Tenant by Special Warranty Deed immediately upon exercise of the Purchaser Option or other termination of this Lease.

**§ 10.5. Tenant's Management and Operating Covenant.** Following issuance of the Certificate of Occupancy and continuing during the remainder of the Rental Period, Tenant shall prudently manage and continuously operate (or cause to be managed and continually operated) the Premises. Except for apartments being offered for rent, Tenant will not leave the Premises unoccupied or vacant and will continuously conduct and carry on in the Premises the type of business for which the Premises are leased. Tenant agrees to be open during business hours appropriate for the type of business and uses for which the Premises are leased, except when Tenant is prevented from doing so by strikes, lockouts or other causes beyond the reasonable control of Tenant. Tenant will properly maintain the Premises and all other improvements to the Premises in good repair, reasonable wear and tear excepted. Tenant shall, at its expense, maintain the Premises in good condition and repair and shall make all structural repairs and replacements to both exteriors and interiors 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 and refrigerated air conditioning or evaporative cooling equipment and parts thereof serving the Premises, and shall repair any vandalism on the Premises and shall replace all cracked, chipped and broken glass 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 installation therein, and except for an emergency involving health and safety issues, will give Tenant at least 90 days prior written notice before performing any repairs or maintenance on the Premises. 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, together with an administrative and mobilization expense not to exceed 15% of all such costs, shall be due and payable as additional rent to Landlord within 10 days after Landlord's written demand.

## **ARTICLE 11 INTENTIONALLY OMITTED**

## **ARTICLE 12 IMPAIRMENT OF LANDLORD'S TITLE**

**§ 12.1. No Liens.** Subject to the right of contest and appeal and to Section 3.4 above, 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.

**§ 12.2. 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 60 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 monthly until concluded.

**§ 12.3. 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.

**§ 12.4. No Agency Intended.** The parties acknowledge that Tenant is required to operate and maintain the Premises. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the operation or maintenance of any improvement Tenant on the Premises, the same to be accomplished at the sole expense of Tenant.

## **ARTICLE 13 INSPECTION**

**§ 13.1. 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 72 hours written notice prior to any inspection of any building interior. Except in the event of a health and safety emergency, Landlord will require no more than one inspection per year.

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

## **ARTICLE 14 INDEMNIFICATION**

### **§ 14.1. Indemnification of Landlord.**

**A.** Tenant shall indemnify and save Landlord harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by third parties by reason of any of the following:

(1) operation or maintenance of the Premises or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents during the Rental Period;

(2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or improvements or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof in a safe condition;

(3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

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

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

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any 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 of Tenant relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or improvements, the Premises or any part thereof or any activities performed by Tenant which are required by the terms of this Lease or such other contracts and agreements entered into by Tenant, or any party acting on behalf of Tenant;

(9) any tax, including but not limited to any tax attributable to the execution, delivery or recording of this Lease, such as the GPLET tax, or any excise tax due for which Tenant believes an exemption or abatement applies, and for these taxes it is later determined by a taxing authority or court of law that an exemption is not applicable to a portion or all of the Premises, or that the basis for the tax has otherwise not been correctly calculated, with respect to events occurring during the Rental Period.

**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 save the Landlord harmless from any loss or damage thereto by any cause whatsoever other than the negligence, gross negligence or willful conduct or omission 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 covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

D. 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, gross negligence or willful misconduct or omissions of Landlord, its agents, employees or contractors.

E. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys selected by Landlord, as approved by Tenant, 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. Landlord shall at all times have the right to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against it.

**§ 14.2. Indemnification of Tenant.** Landlord shall indemnify and hold harmless Tenant, its officers, employees and agents, from and against all claims and demands of any nature whatsoever arising out of the injury to or death of any person or damage to property, to the extent caused by the acts or omissions of Landlord, its employees, agents, guests, licensees or invitees, but excluding to the extent caused by Tenant's negligence, gross negligence or willful misconduct or omission.

**§ 14.3. Survival of Indemnification Obligations.** The provisions of this Article 14 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 15 DAMAGE OR DESTRUCTION**

**§ 15.1. 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, 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. 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.

**§ 15.2. 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 the Tenant or as required by a Leasehold Mortgage.

**§ 15.3. Failure to Commence Repairs.** If Tenant is required to restore the Premises pursuant to § 15.1 above and the design work for such restoration shall not have been commenced within 180 days after the date of the damage or destruction, or if such work is not completed within 36 months after completion of such design, Landlord may terminate this Lease pursuant to Article 18, subject in all events to the requirement that Tenant exercise Tenant's Purchase Option.

**§ 15.4. 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 untenantable 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 obligations imposed upon Tenant hereunder.

**§ 15.5. Substantial Damage at End of Term.** If 50% or more of the square footage of the structural component of the Premises on the Premises is substantially damaged or destroyed by fire or other casualty at any time during the last three years of the Rental Period either Landlord or Tenant may, on 60 days' written notice, terminate this Lease pursuant to Article 18, in which case title to the Premises shall be conveyed to Tenant who shall take the Premises in an "as is" condition, upon exercise of Tenant's Purchase Option.

## **ARTICLE 16 CONDEMNATION**

### **§ 16.1. Total, Substantial, or Unusable Remainder.**

**A. Entire or Partial Condemnation.** If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the Term, this Lease shall terminate with respect to the part of the Premises so taken and any other portion of the Premises as may be specified by Tenant, and, subject to the provisions of any Leasehold Mortgage, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for constructing improvements to 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.

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

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

D. Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the Premises or Tenant's leasehold estate or any part thereof, or the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

## **ARTICLE 17**

### **ASSIGNMENT AND SUBLETTING**

**§ 17.1. Assignment by Tenant.** Tenant shall not assign its interest in this Lease or allow any other person or entity to occupy or use all or any part of the Premises, except as set forth in Section 17.6 below, without first obtaining Landlord's prior written consent, which may be withheld in Landlord's reasonable discretion, except that Tenant may assign or sublease its interest to an Affiliate without Landlord's consent. Any assignment without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute an Event of Default. Notwithstanding anything contained in this §§17.1 or 17.3 to the contrary but otherwise subject to the provisions of this Lease, Tenant may assign its interest in this Lease, without the prior written consent of Landlord, to any of the following: (i) an Affiliate of Tenant, (ii) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as: (a) Tenant's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (b) such surviving or created entity has the financial ability, after the effective consummation of such merger or consolidation to perform Tenant's obligations under this Lease, and (iii) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant's assets, so long as such entity has the financial ability after such acquisition to perform Tenant's obligations under this Lease, provided Tenant shall and hereby agrees to remain primarily liable under this Lease, and Tenant gives Landlord not less than 180 days prior written notice of such assignment.



**§ 17.2. Notice of Proposed Assignment.** Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease, the name of the proposed assignee, information concerning the financial responsibility of the proposed assignee and the terms of the proposed assignment, and Landlord shall, within 30 days of receipt of such written notice, and additional information reasonably requested by Landlord concerning the proposed assignee's financial responsibility, elect one of the following:

**A.** Consent to such proposed assignment; or

**B.** Refuse such consent; provided however, that Landlord shall not unreasonably refuse consent or unreasonably withhold, delay or condition consent. Landlord's failure to respond within the timeline set forth in this §17.2 shall be deemed to be an acceptance of such consent.

**§ 17.3. Landlord's Consent.** Without limiting Landlord's grounds for disapproval, Landlord's disapproval shall be deemed reasonable if it is based on Landlord's analysis that (i) the proposed assignee's credit is not consistent with the Premises operation obligations under this Lease or (ii) the assignee's use and occupancy of the Premises will be inconsistent with §8.2 of this Lease. Landlord's waiver or consent to any assignment shall not relieve Tenant from any primary obligation under this Lease, including payment of the Net Rent amounts set forth in Section 3.1. As a condition for granting its consent to any assignment, Landlord may require that the assignee remit directly to Landlord, monthly, all monies due to Landlord. If Landlord shall consent to an assignment under the provisions of this § 17.3, Tenant shall pay Landlord's reasonable processing costs and reasonable attorneys' fees incurred in giving such consent.

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

**§ 17.5. Assignment by Landlord.** Landlord shall not assign or encumber its interest in the Lease or in the Premises without first obtaining Tenant's prior written consent, which may be withheld in Tenant's reasonable discretion. Notwithstanding the foregoing, this provision shall not prevent Landlord, without Tenant's consent, from assigning its interest herein and to the Premises to the City or any other governmental entity in the State of Arizona, or otherwise by operation of law; provided, however, such assignee shall assume all of Landlord's obligations and shall receive all of Landlord's benefits hereunder.

**§ 17.6. Sublease by Tenant.** Tenant may sublease (each, a "Sublease") portions of the Premises in the normal course of Tenant's business for occupancy consistent with the uses permitted by Section 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 Sublease if all of the conditions set forth below are satisfied:

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

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

C. If and to the extent that Tenant develops any retail on the Premises, then Tenant shall require in each Sublease that each subtenant provide Tenant and all vendors, tenants or the like within the Premises shall provide the Landlord with their respective eight digit "TPT License Number" and the business name associated with that TPT License as filed with the Arizona Department of Revenue.

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

**§ 17.7. Encumbrance of Premises.** Tenant in its discretion may encumber the Premises prior to the Commencement Date and/or Tenant's leasehold interest in the Premises after the Commencement Date to secure a Construction and Development Loan. Upon the Commencement Date any such Construction and Development Loan shall be treated as a Leasehold Mortgage pursuant to Section 3.4.

## **ARTICLE 18 DEFAULT BY TENANT**

**§ 18.1. 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 20 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 30 days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such 30 day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required 30 days, its time to do so shall be extended by the time reasonably necessary to cure the same as reasonably determined by Landlord) (a "Non-Monetary Default"); or

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

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

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

**F. Default under any Loan with any Lender.** If Tenant defaults under any loan to any Lender pursuant to the default terms of any loan document.

**§ 18.2. Notice and Termination.** Upon the occurrence of one or more of the Events of Default listed in § 18.1, the Landlord at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Tenant specifying such 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 40 days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to Tenant's exercise of its Purchase Option prior to such date, 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; provided, however, that upon payment of any amount due but unpaid to Landlord hereunder (regardless of when paid), Landlord shall re-convey the Premises to Tenant by Special Warranty Deed subject to the Permitted Exceptions.

**§ 18.3. Tenant Liability.** In the event that Landlord terminates this Lease due to a default of Tenant, Tenant shall pay Landlord an amount equal to the Purchase Price set forth in § 29.3(A) that would have been due if the Purchase Option had been exercised on the day of such termination, in which event Landlord shall re-convey title to Tenant subject only to the Permitted Exceptions and any other title exceptions created or consented to by Tenant. 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.

**§ 18.4. 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 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.

**§ 18.5. Remedies Cumulative.** In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach. 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 1% per month, but in no event an amount greater than permitted by law, but this shall in no way limit any claim for damages for Landlord for any breach or default by Tenant.

**§ 18.6. Late Charge.** If payment required to be made by Tenant to Landlord under the terms of this Lease is not received within 10 days after written notice of delinquency, a late charge shall become immediately due and payable as an Additional Payment in an amount equal to 2.5% of the late payment.

**§ 18.7. Specific Performance.** If a default is not commenced to be cured within 30 calendar days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

**§ 18.8. Self-Help.** If a default is not commenced to be cured within 30 calendar days after service of the notice of default and 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 hard and soft costs, together with an administrative and mobilization expense not to exceed 15% of all such costs, which shall be paid to Landlord within 10 days after receipt of an invoice for such costs.

## **ARTICLE 19 DEFAULT BY LANDLORD**

**§ 19.1. Limitations of Landlord's Liability; Remedies.** In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant shall be entitled to enjoin such breach, terminate this Lease, exercise Tenant's Purchase Option set forth in Article 29 below, provided, further, that TENANT HEREBY WAIVES ANY CONSEQUENTIAL OR

PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM ARISING FROM LANDLORD'S BREACH OF THIS LEASE.

## **ARTICLE 20 UNENFORCEABLE TERMS**

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

## **ARTICLE 21 NOTICES**

**§ 21.1. Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, except as pursuant to Article 13, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other parties at the address as set forth below:

If to Landlord:

Rio Nuevo Multipurpose Facilities District  
Attention Chairman Fletcher McCusker  
1703 E. Broadway Blvd.  
Tucson, Arizona 85719

With a copy to:

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

If to Tenant:

The Cadence Apartments, LLC  
3021 Citrus Circle, Suite 130

Walnut Creek, CA 94598  
Attn: Chuck Bond

With copies to:

Keri Silvyn, Esq.  
Lazarus & Silvyn, P.C.  
5983 E. Grant Road, Suite 290  
Tucson, Arizona 85712

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

## **ARTICLE 22 CONDITION**

**§ 22.1. Condition of Premises.** Tenant represents that the Land, any sidewalks, vaults, the title to the Premises, parking areas adjoining the same, any subsurface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

Upon the Completion 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 its "AS-IS, WHERE-IS" condition.

**§ 22.2. AS IS. EXCEPT AS PROVIDED HEREIN,** NEITHER LANDLORD NOR ANYONE ACTING FOR OR ON BEHALF OF LANDLORD, HAS MADE ANY REPRESENTATION, WARRANTY, STATEMENT OR PROMISE TO TENANT CONCERNING THE PREMISES, OR THE QUALITY, VALUE, FEASIBILITY, DESIRABILITY, THE IMPROVEMENTS FOR OR INTO ANY PARTICULAR USE, THE CURRENT OR PROJECTED INCOME OR EXPENSES OF THE PREMISES, OR ANY OTHER MATTER WITH RESPECT TO THE PREMISES; THAT IN ENTERING INTO THIS LEASE, TENANT HAS NOT RELIED UPON ANY REPRESENTATION, STATEMENT OR WARRANTY OF LANDLORD OR ANYONE ACTING FOR OR ON BEHALF OF LANDLORD, OTHER THAN AS EXPRESSLY CONTAINED IN THIS LEASE; AND TENANT DOES HEREBY WAIVE AND LANDLORD DOES HEREBY DISCLAIM ALL

WARRANTIES OF ANY KIND OR TYPE WHATSOEVER WITH RESPECT TO THE PREMISES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MARKETABILITY, MERCHANTABILITY AND TITLE, FITNESS FOR A PARTICULAR PURPOSE, TENANTABILITY, HABITABILITY, OR USE, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL ACCEPT THE 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 23 QUIET ENJOYMENT**

**§ 23.1. Quiet Enjoyment.** Subject to all 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, without hindrance or molestation by Landlord.

**§ 23.2. Agreement for Non-Disturbance of Subtenants.** Landlord covenants and agrees, for the benefit of any subtenant, that Landlord shall recognize the subtenant as the direct tenant of Landlord upon termination or expiration of this Lease pursuant to any of the provisions of Article 18 hereof in which title to the Premises remains in Landlord if (a) all Lenders shall have agreed in writing substantially to the effect that they will not join the subtenant as a party defendant in any foreclosure action or proceeding which may be instituted or taken by said Lenders, nor evict the subtenant from the portion of the Premises demised to it, nor affect any of the subtenant's rights under its sublease by reason of any default under any mortgage, or (b) Tenant shall deliver to Landlord a certificate of an Appraiser, reasonably satisfactory to Landlord, stating, in substance, that the rent payable by the subtenant under its sublease, after taking into account any credits, offsets, or deductions to which the subtenant may be entitled thereunder, constitutes not less than the then fair rental value of the space demised thereunder; provided, however, that at the time of the termination of this Lease (i) no default exists under the subtenant's sublease which at such time would then permit the landlord thereunder to terminate the same or to exercise any dispossession remedy provided for therein, and (ii) the subtenant shall deliver to Landlord an instrument confirming the agreement of such subtenant to attorn to Landlord and to recognize Landlord as the subtenant's landlord under its sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord shall be:

**A.** liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord), or

**B.** subject to any offsets or defenses which the subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord), or

C. bound by any payment of rent which the subtenant might have paid for more than the current month to any prior landlord (including, without limitation, the then defaulting landlord), or

D. bound by any covenant to undertake or complete any construction of the Premises or any portion thereof demised by said sublease, or

E. bound by any obligation to make any payment to the subtenant, or

F. bound by any modification of the sublease which reduces the basic rent, Additional Payments, supplemental rent or other charges payable under the sublease, or shortens the term thereof, or otherwise materially adversely affects the rights of the landlord thereunder, made without the written consent of Landlord.

## **ARTICLE 24 ESTOPPEL**

**§ 24.1. Estoppel Certificates.** Landlord or Tenant (including Tenant's assignees and subtenants) may request a certificate (benefiting itself, its successors and lenders) 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;

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; and

D. Such other information as may be reasonably required by a Lender.

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

## **ARTICLE 25 CONSENTS**

**§ 25.1. Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if they fail to notify the other party in writing within 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.



**§ 25.2. 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, conditioned or delayed, except where otherwise specifically provided. The remedy of the party requesting such consent or approval, in the event such party should claim or establish that the other party has unreasonably withheld, conditioned or delayed such consent or approval, shall be limited to injunction or declaratory judgment and in no event shall such other party be liable for a money judgment.

## **ARTICLE 26 LANDLORD NOT LIABLE**

**§ 26.1. 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 quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor.

## **ARTICLE 27 ENFORCED DELAY**

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

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

**B.** the discovery of Regulated Substances (defined in Article 28 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.** the order, judgment, action, or determination of any court, administrative agency, governmental authority or other governmental body (collectively, an “Order”) which delays the completion of the work or other obligation of the Party claiming the delay; or the suspension, termination, interruption, denial, or failure of renewal (collectively, a “Failure”) of issuance of any permit, license, consent, authorization, or approval necessary to Tenant’s or Landlord’s undertakings pursuant to this Lease, unless it is shown that such Order or Failure is the result of the failure to comply with Applicable Laws or to fully comply with the applicable application requirements by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order or Failure shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay;

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

**E.** unreasonable delay by the City 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 Tenant are completed and that all subsequent submittals address all comments made by City reviewers and are made in a timely manner; and

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

**§ 27.2. Enforced Delay Exceptions and Notice.** In no event will Enforced Delay include any delay resulting from general economic or market conditions, nor from the unavailability for any reason of contractors, subcontractors, vendors, investors or lenders desired by Landlord or Tenant in connection with the Premises. 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 27 shall, within 30 days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party.

## **ARTICLE 28**

### **COMPLIANCE WITH ENVIRONMENTAL LAWS**

#### **§ 28.1. 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; Landfill Ordinance of City of Tucson, Chapter 29, Article IX of the Tucson Code; regulations promulgated thereunder and any other statutes, laws, regulations, rules and ordinances (whether enacted by the local, county, state or federal government), and any environmental judgment or order of any governmental agency or judicial entity with proper jurisdiction, 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 of any Regulated Substance in violation of any applicable Environmental Law.

**§ 28.2. Compliance.** Tenant shall, at Tenant’s own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, applicable to Tenant’s leasehold and/or operation on the Premises.

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

**§ 28.3. Indemnification.**

A. To the fullest extent allowed by law, Tenant shall indemnify, defend and hold harmless, on demand, Landlord, its successors and assigns, its officers, directors, employees, boards, and commissions for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any third party claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to or as a result of a violation of any applicable Environmental Law and/or the Release of any Regulated Substance in violation of any applicable Environmental Law, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises or portion thereof by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, sublessee, visitors or licensees during the Rental Period (collectively “Landlord’s Indemnified Matters”). Regardless of the date of termination of this Lease, Tenant’s obligations and liabilities under this Article 28 shall continue so long as the Landlord bears any liability or responsibility under Environmental Laws related to Tenant’s occupation and/or 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, under the Premises, or that have migrated from the Premises due to Tenant’s occupation and/or operations during the Rental Period. 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 in equity or otherwise provided for in this Lease.

**B.** Without limiting the foregoing, if the presence of any Regulated Substance on or under the Premises results in any contamination of the Premises or any adjacent real property due to Tenant's occupation and/or operations 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 remediate the Premises to an acceptable condition as required by applicable federal, state and/or local Environmental Laws; provided that Landlord's written approval of such actions shall first be obtained, which shall not be unreasonably conditioned, withheld or delayed. Any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

**C.** If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys selected by Tenant, as approved by Landlord, 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. Landlord shall at all times have the right to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against it. However, Tenant shall not be responsible to indemnify settlements related to any Landlord Indemnified Matter entered into without Tenant's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

**D.** Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential Releases of Regulated Substances on or under the Premises during the 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.

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

**F.** Tenant shall notify Landlord immediately of any of the following: (1) any correspondence or communication from any governmental agency regarding any alleged violation of Environmental Laws as a result of Tenant's occupancy of the Premises or Tenant's use of the

Premises, (2) any change in Tenant's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a third party claim or other third party occurrence for which Tenant may incur an obligation under this Article.

**G.** Subject to approval of a sublease by Landlord pursuant to Article 17 above, Tenant shall insert the provisions of this Article 28 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

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

**I.** 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.

#### **§ 28.4. Noncompliance.**

**A.** Tenant shall, at its sole cost and expense, remedy 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 28 or applicable Environmental Law shall constitute a material default under this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Article shall not release Tenant from any obligation it would otherwise have hereunder.

**B.** The covenants in this Article 28 shall survive the expiration or earlier termination of this Lease.

### **ARTICLE 29 PURCHASE OF PREMISES BY TENANT**

**§ 29.1. Option to Purchase.** Landlord hereby grants to Tenant the exclusive option to purchase the Premises ("Purchase Option") according to the terms and conditions hereinafter set forth.

**§ 29.2. Exercise of Option.** The Purchase Option granted herein shall become effective upon Tenant's conveyance to Landlord of fee title to the Premises and Tenant shall have the right to exercise the Purchase Option hereunder at any time and for any reason after termination of this Lease (the "Option Period"); provided that the Purchase Option shall be conditioned upon Tenant curing any monetary default under this Lease. The Purchase Option granted herein may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of

exercise to Landlord. If Tenant has not exercised the Purchase Option prior to the expiration or termination of this Lease, pursuant to A.R.S. §42-6206 (C), Tenant shall exercise the Purchase Option so that title vests in Tenant no later than twelve months following the expiration of the Rental Period.

**§ 29.3. Conveyance of Premises.**

**A. Purchase Price.** When Tenant elects to exercise the Purchase Option, the purchase price for the Premises shall equal (i) \$10; (ii) the amount of any Uncured Monetary Defaults (defined below) accrued during the Rental Period, which shall be payable to Landlord prior to conveyance of title; and (iii) all closing costs incurred in connection with the conveyance. The term “Uncured Monetary Defaults” means only any unpaid Net Rents pursuant to Article 3, any unpaid Additional Payments pursuant to Article 4, and any unpaid amounts due to Landlord pursuant to Section 18.8.

**B. Conveyance of Title and Delivery of Possession.** 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 any Leasehold Mortgagee, including but not limited to a Construction and Development Lender (until such time as the applicable Leasehold Mortgage is satisfied or released), which consent may be given or withheld in Tenant’s and the applicable Leasehold Mortgagee’s sole and absolute discretion. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the property interest to be conveyed within 60 days after delivery to Landlord of Tenant’s notice of exercise; provided, however, that notwithstanding any language herein to the contrary in no event shall title vest in Tenant later than twelve months from the expiration of the Rental Period regardless of whether Tenant has exercised the Purchase Option. Landlord’s entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit F, subject only to those liens, encumbrances, and other title exceptions existing on the Effective Date plus any additional title exception created or approved by Tenant. In addition, upon request by Tenant, Landlord shall execute and deliver (i) a memorandum in recordable form reflecting the termination or partial termination of this Lease; (ii) 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 (iii) 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 reversion of title to the Premises in all respects in Tenant or its successor. All expenses in connection with 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 shall be delivered to Tenant 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).

## **ARTICLE 30 MISCELLANEOUS**

**§ 30.1. 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.

**§ 30.2. 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 located in Tucson, Arizona. The prevailing party in such action shall be reimbursed by the non-prevailing party for all costs and expenses of such action, including reasonable attorneys' fees as may be fixed by the Court. This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

**§ 30.3. Memorandum.** Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease for recording in the Office of the County Recorder, Pima County, Arizona in the form attached hereto as Exhibit H, and if required by any Lender or the City containing such additional terms consistent with the terms of this Lease as Tenant may request.

**§ 30.4. Entire Agreement.** This Lease, together with its schedules and Exhibits and all documents incorporated herein by reference contain the entire agreement between Landlord and Tenant and any executory 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 executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

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

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

**§ 30.7. 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.



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

**§ 30.9. 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.

**§ 30.10. Exhibits and Incorporation.** The exhibits that are either attached or referenced herein are incorporated in this Lease as though set forth verbatim.

**§ 30.11. Attorneys’ Fees.** Except as set forth in §30.2, each party shall bear its own attorneys’ fees in the preparation of this Lease and any other documents related to the Premises.

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

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

SIGNATURES ON FOLLOWING PAGE

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

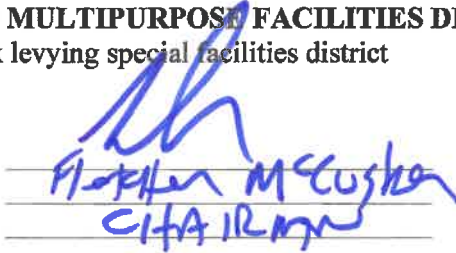
**"Landlord"**

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

By:

Name:

Its:

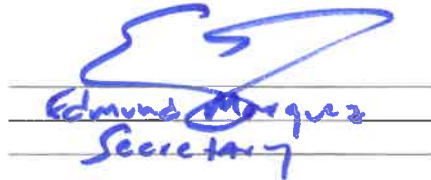
  
Florian McCusker  
CITA IRM

ATTEST:

By:

Name:

Its:

  
Edmund Marquez  
Secretary

**"Tenant"**

**THE CADENCE APARTMENTS, LLC,**  
a Delaware limited liability company

By:

Name:

Its:

  
Chuck Bond  
Authorized Signatory

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

**“Landlord”**

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

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

ATTEST:

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

**“Tenant”**

**THE CADENCE APARTMENTS, LLC,**  
a Delaware limited liability company

By:   
Name: Chuck Bond  
Its: Authorized Signatory

## **LIST OF EXHIBITS**

Exhibit "A"	Legal Description
Exhibit "B"	Form of Amendment to Lease
Exhibit "C"	Insurance Requirements
Exhibit "D"	Prohibited Uses
Exhibit "E"	Permitted Exceptions
Exhibit "F"	Form of Landlord's Special Warranty Deed
Exhibit "G"	Form of Tenant's Special Warranty Deed
Exhibit "H"	Form of Memorandum of Lease

## **EXHIBIT A**

### **(Legal Description of Premises)**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF TUCSON, IN THE COUNTY OF PIMA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

#### **PARCEL NO. 1:**

Units 6, 7, 8 and 9, of PLAZA CENTRO - RAILYARD, a Condominium, as shown on the Amended Condominium Final Plat for Plaza Centro - Railyard, recorded in Recording No. 20121360229 and 2<sup>nd</sup> Amended Condominium Final Plat for Plaza Centro - Railyard, recorded in Recording No. 20143350429 in the office of the County Recorder of Pima County, Arizona, as established by the Amended and Restated Condominium Declaration recorded October 31, 2012 in Recording No. 20123051385, as amended by Certificate of First Amendment recorded in December 1, 2014 in Recording No. 20143350430 and Second Amendment of Condominium Declaration recorded March 6, 2015 in Recording No. 20150650698;

TOGETHER WITH an undivided interest in Common Element "1" and Common Element "2" in the applicable percentages as provided in the declaration to be an appurtenance to said units;

Subject to reservations contained in the Patent from the United States of America recorded in Book 2 of Deeds, Page 311, reading as follows:

No title shall be hereby acquired by any mine of gold, silver, cinnabar or copper or to any valid claim or possession held under the existing laws of congress.

#### **PARCEL NO. 2:**

Units 1 and 2, of PLAZA CENTRO - GREYHOUND, a Condominium created by that certain Declaration recorded February 7, 2014 in Recording No. 20140380314, as amended by the First Amendment of Condominium Declaration recorded March 6, 2015 in Recording No. 20150650697 and as shown on the plat of said Condominium recorded February 7, 2014 in Recording No. 20140380313 in the office of the County Recorder of Pima County, Arizona;

TOGETHER WITH, an undivided interest in the Common Elements in the applicable percentages as provided in the declaration to be an appurtenance to said units;

Subject to reservations contained in the Patent from the United States of America recorded in Book 2 of Deeds, Page 311, reading as follows:

No title shall be hereby acquired by any mine of gold, silver, cinnabar or copper or to any valid claim or possession held under the existing laws of congress.

#### **PARCEL NO. 3:**

Those appurtenant easement rights described in Article IV, Sections 4.3, 4.4, 4.5 and 4.7 of that certain Amended and Restated Condominium Declaration of Plaza - Centro Railyard, a Condominium, recorded October 31, 2012 in Recording No. 20123051385, in the office of the County Recorder of Pima County, Arizona, as amended by Certificate of First Amendment recorded December 1, 2014 in Recording No. 20143350430 and Second Amendment of Condominium Declaration recorded March 6, 2015 in Recording No. 20150650698.

## EXHIBIT B

### (Form of Amendment to Lease)

#### **AMENDMENT TO TRIPLE NET GOVERNMENT PROPERTY LEASE EXCISE TAX**

THIS AMENDMENT TO TRIPLE NET GOVERNMENT PROPERTY LEASE EXCISE TAX (this "Amendment") is made and entered into as of the Effective Date by and between **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district, having its office at 1703 E. Broadway Blvd., Tucson, AZ 85719 (hereinafter "Landlord"), and **THE CADENCE APARTMENTS, LLC**, a Delaware limited liability company, having its office at 1095 E. 2100, Suite 110, Salt Lake City, UT 84106 (hereinafter "Tenant"). Landlord and Tenant are referred to collectively as the "Parties." The "Effective Date" shall be the date upon which the last of Landlord and Tenant executed this Amendment, as indicated on the signature pages of this Amendment.

The Parties have previously executed and delivered that certain Triple Net Government Property Lease with an Effective Date of \_\_\_\_\_ (the "Lease") with respect to certain Premises, which Lease is evidenced by a Memorandum of Ground Lease dated \_\_\_\_\_ and recorded \_\_\_\_\_ in \_\_\_\_\_ of the official records of the Pima County, Arizona Recorder.

Landlord and Tenant have agreed to memorialize the Commencement Date as contemplated by Section 1.2 of the Lease and to the amount of the Net Rent pursuant to Section 3.1 (A) of the Lease.

In consideration of the covenants and agreements contained in this Amendment, the Parties agree as follows:

1. Definitions. Capitalized terms used in this Amendment without definition shall have the meanings assigned to such terms in the Lease, unless the context expressly requires otherwise.
2. Term. The Commencement Date is \_\_\_\_\_. The Termination Date of the Lease is \_\_\_\_\_, unless terminated earlier pursuant to the terms of the Lease.
3. Net Rent. Pursuant to Section 3.1 A, the Net Rent for the Rental Period shall be \$100.00 per annum, which amount may be pre-paid.
4. Full Force and Effect. Except as expressly modified by this Amendment, the Lease remains unmodified and in full force and effect. All references in the Lease to "this Lease" shall be deemed references to the Lease as modified by this Amendment.
5. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts.

and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Amendment.

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Amendment as of the date set forth under the signatures of the Parties below.

**“Landlord”**

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

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

Date of Execution: \_\_\_\_\_


ATTEST:

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

Date of Execution: \_\_\_\_\_

**“Tenant”**

**THE CADENCE APARTMENTS, LLC,**  
a Delaware limited liability company

By:  \_\_\_\_\_  
Name: **Chuck Bond** \_\_\_\_\_  
Its: **Authorized Signatory** \_\_\_\_\_

Date of Execution: \_\_\_\_\_

## EXHIBIT C

### (Insurance Requirements)

**1. Types of Coverage.** Tenant at its sole cost and expense shall, during the entire Rental Period hereof, obtain, maintain and keep in full force and effect (or alternatively ensure that its subtenants keep in full force and effect), providing at least the coverages set forth herein:

(i) Comprehensive all risk insurance on the Premises, Improvements (including all replacements and additions thereto) and its personal property, in each case (i) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Lease shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (ii) containing either an agreed amount endorsement or a waiver of all co-insurance provisions; and (iii) if any of the Premises or the use of the Premises shall at any time constitute a legal non-conforming structure or use, Tenant shall obtain an "Ordinance or Law Coverage" or "Enforcement" endorsement, which shall include sufficient coverage for (a) costs to comply with building and zoning codes and ordinances, (b) demolition costs, and (c) increased costs of construction. If any portion of the Premises is currently or at any time in the future located in a federally designated "special flood hazard area," Tenant shall obtain flood hazard insurance, but in no event less than the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended. Deductibles for properties designated as Special Flood Hazard Areas as defined by the Federal Emergency Management Agency may be subject to higher deductibles based on a percentage of the values of the location and subject to a minimum of \$1,000,000. Any recovery by Landlord, Tenant or Landlord's Lender under any policy of insurance maintained in accordance with Subsection 1.A of this Exhibit C shall be applied in the manner provided in Article 14 of this Lease. Landlord at its option may obtain such insurance and bill Tenant the costs of such insurance as additional rent.

(ii) A policy for commercial general liability insurance covering Tenant's use and occupancy of the Premises, including bodily injury, property damage, contractual liability under this Lease, independent contractors, products and completed operations liability and owned/non-owned auto liability, occurring on the Premises, minimum combined single limit \$1,000,000 and \$2,000,000 aggregate. Such policy shall include a blanket waiver of subrogation in favor of Landlord and shall include Landlord as an additional insured under a blanket endorsement. Tenant's insurance shall be primary, with any insurance maintained by Landlord to be considered excess. Tenant agrees that it will not keep, use, sell, or offer for sale in or upon the Premises any article which may be prohibited by the standard form of fire insurance policy. Such insurance (i) to be on the "occurrence" form; and (ii) to continue at not less than the aforesaid limit until required to be changed by Landlord in writing to an amount which is then customary and commercially reasonable in relation to the type of operation then being conducted by Tenant in the Premises, by reason of changed economic conditions making such protection inadequate.

(iii) Worker's compensation insurance covering all persons employed by Tenant in connection with any work done on or about the Premises with respect to which claims



for death or bodily injury could be asserted against Landlord or the Premises. In lieu of such workmen's compensation insurance, Tenant may provide a program of self-insurance so long as it complies with the rules, regulations and requirements of the appropriate state agency of the State of Arizona, but no less than \$500,000 / \$500,000 / \$500,000.

(iv) To the extent not covered by a policy required pursuant to Subsection 1.A through 1.C above, (i) at all times during which structural construction, material repairs or alterations are being made with respect to the Premises insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (ii) during construction other than cosmetic changes the insurance provided for in Subsection 1.A above, written in a so-called builder's risk completed value form on a non-reporting basis.

(v) If the Premises contains HVAC or other equipment not covered by a policy required pursuant to Subsection 1.A through 1.C above, comprehensive boiler and machinery insurance, in amounts as shall be reasonably required by Landlord or Landlord's Lender.

(vi) Any other form or forms of insurance as Tenant or Landlord or Landlord's Lender may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself, but in no event shall such increased amounts of insurance or such other commercially reasonable types of insurance be in excess of that then commonly required by landlords of comparable projects in metropolitan Tucson, Arizona.

## **2. Policies.**

(i) All insurance provided for in Subsection 1 hereof shall be obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**").

(ii) The Policies maintained pursuant to this Lease shall (i) with respect to all policies of fire, all risk or similar casualty insurance, provide that the insurer waives all rights of subrogation against Landlord, any successor to Landlord's interest in the Premises and Landlord's Lender; (ii) provide that in the event of a loss involving more than one insured the Policies shall be deemed to apply separately for the interest of each insured; and (iii) be primary and without right or provision of contribution as to any other insurance carried by Landlord.

(iii) The insurance companies must be approved, authorized or licensed to provide insurance in Arizona and have a rating of "A" or better for claims paying ability assigned by Moody's Investors Service, Inc. and Standard & Poor's Rating Group or a general policy rating of A- or better and a financial class of VIII or better assigned by A.M. Best Company, Inc. Each such insurer shall be referred to herein as a "**Qualified Insurer**." Tenant agrees that certificates of insurance or, if required by Landlord or the mortgagees of Landlord, will be delivered to Landlord as soon as practicable after the placing of the required insurance, but in no event later than 10 days prior to the time Tenant takes possession of all or any part of the Premises, including possession taken pursuant to Section 2.1 of the Lease.

(iv) Tenant shall use commercially reasonable efforts to notify Landlord and Landlord's Lender in writing prior to any, reduction in coverage below the requirements contained in this Lease, cancellation, or other termination thereof.

(v) Tenant may provide any required insurance through an umbrella or blanket liability or casualty Policy (which blanket or umbrella policy may be issued to the parent company of Tenant, if any, so long as Tenant is and remains a named insured under said policy and such blanket policy otherwise complies with the terms of this Lease), provided, in each case, such Policy affords the coverage required above, is issued by a Qualified Insurer.

(vi) All Policies of insurance provided for or contemplated by Section 1 of this Exhibit C, except for the Policies referenced in Subsection 1.A and 1.C, shall name Landlord, Tenant and Landlord's Lender as the insured or additional insured, as required by this Exhibit C or as their respective interests may appear, and in the case of property damage, boiler and machinery and flood insurance, shall contain a standard non-contributing mortgagee clause naming the Landlord's Lender as the person to which all payments made by such insurance company shall be paid as loss payee and mortgagee providing, among other things, that the loss thereunder shall be payable to Landlord's Lender. If no Landlord's Lender exists, the Landlord shall be named as sole loss payee. If Landlord is named as loss payee, and a blanket property policy is in place, Tenant shall be entitled to participate in any settlement and adjustment with the carrier subject to Landlord's approval which shall not be unreasonably withheld, conditioned or delayed, provided that in any case, Landlord shall and hereby is authorized to solely collect and receive any such insurance proceeds with respect to its interests as established by this Lease.

**3. Payment of Proceeds on Termination.** Notwithstanding anything in this Lease to the contrary, in the event of damage to or destruction of the Premises pursuant to Article 15 of the Lease, Tenant will be entitled to all proceeds from the policies carried by Tenant. In the event that either party terminates the Lease pursuant to Article 15, Tenant shall be required to exercise its Purchase Option under the Lease, and will accept the Premises in their "As-Is" condition.

**4. No Separate Insurance.** Tenant shall not obtain any separate or additional insurance which is contributing in the event of loss unless Landlord and Landlord's Lender (if any) are each insured thereunder (as their interests may appear). Landlord may, but shall not be obligated to, take out and carry any other form or forms of insurance as it or the Landlord's Lender may reasonably determine advisable. Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord. Landlord will not carry insurance of any kind on Tenant's property, furniture or furnishings or on any equipment of Tenant under this Lease and Landlord shall not be obligated to repair any damage thereto or replace the same.

**5. Compliance.** Tenant shall comply with all the terms and conditions of each insurance policy maintained pursuant to the terms of this Lease. Tenant shall promptly comply with all reasonable requirements of the insurance authority or of any insurer now or hereafter in effect relating to the Premises.

**6. Landlord Protections.** If any insurance policy shall be canceled or cancellation shall be threatened or the coverage thereunder reduced or threatened to be reduced, in any way by reason of the use or occupation of the Premises or any part thereof by Tenant or by any assignee or sub-tenant of Tenant or by anyone permitted by Tenant to be on the Premises and, if Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after written notice thereof from Landlord,

Landlord may, at its option to obtain such Policies and enter upon the Premises and attempt to remedy such condition and Tenant shall forthwith pay the cost thereof to Landlord as additional rent. Notwithstanding the foregoing provisions of this Section 6, if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligations hereunder and Landlord shall have no obligation to attempt to remedy such default.

**7. Waiver of Subrogation.** As provided in Subsection 2.B above, any policy or policies of fire, all risk or similar casualty insurance, which either party obtains in connection with the Premises and the insurance required to be obtained by Tenant pursuant to the provisions of Subsection 1.C above shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured prior to the occurrence of injury or loss. Landlord and Tenant hereby waive any rights of recovery against the other for injury or loss due to hazards covered by any such policy of insurance or which would have been covered under the insurance policies required under this Lease, regardless of whether the negligence of the other party caused such loss or damage and irrespective of whether such policies contain such a waiver of subrogation clause or endorsement.

**8. Insurance Coverage Provided by Subtenant.** Notwithstanding any language herein to the contrary, if required insurance coverage is provided by a subtenant of Tenant occupying the Premises, then Tenant shall not be required to provide duplicative coverage.

## **EXHIBIT D**

### **(Prohibited Uses)**

The Premises shall be used only for residential and commercial purposes of the type normally found in an urban multi-family apartment complex with potential ground-level retail mixed uses, including, without limitation, restaurants, bars, coffee shops, and other retail stores and/or commercial services. The following uses are specifically prohibited in the Premises without the prior written consent of Landlord which Landlord may withhold in its sole and absolute discretion:

- (i) betting parlor; gambling casino or gaming activities including but not limited to gambling, electronic gaming machines, slot machines and other devices similar to the aforementioned; provided that legalized sports betting shall be permitted if otherwise permitted by applicable laws and ordinances.
- (ii) a carnival or an amusement park, arcade, or a video game parlor.
- (iii) funeral parlor; cemetery; crematorium.
- (iv) an automobile dealership or a boat dealership, a body and fender shop; motor vehicle storage facility; boat storage facility.
- (v) flea market.
- (vi) massage parlor; modeling studio; adult bookstore; any establishment primarily engaged in the business of selling, exhibiting or distributing pornographic or obscene materials; a business primarily engaged in displaying live models or dancers, a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or of a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration.
- (vii) establishment selling or exhibiting materials or paraphernalia for use with illicit drugs; a so- called "head shop."
- (viii) 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.
- (ix) a central laundry or dry-cleaning plant (other than laundry done in the normal course of business in a hotel and 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).
- (x) a house of worship.

- (xi) a school (except instructional classes incidental to another primary retail use).
- (xii) a day care facility, child care facility, preschool or children's nursery.
- (xiii) any business which creates unreasonably or unusually strong or offensive odors, fumes, emissions or sounds.

## **EXHIBIT E**

### **Permitted Exceptions**

**To be added upon the completion of Landlord's due diligence pursuant to Section 6.2 (B) of the Lease.**

**EXHIBIT F**

**(Form of Landlord's Special Warranty Deed)**

**WHEN RECORDED, RETURN TO:**

**THE CADENCE APARTMENTS, LLC**  
1095 E. 2100, Suite 110  
Salt Lake City, UT 84106  
Attn:

---

**SPECIAL WARRANTY DEED**

For good and valuable consideration, **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district (“**Grantor**”), does hereby convey to **THE CADENCE APARTMENTS, LLC**, a Delaware limited liability company, having its office at 1095 E. 2100, Suite 110, Salt Lake City, UT 84106 (“**Grantee**”), that certain real property situated in Pima County, Arizona, and legally described on **Exhibit A** attached hereto and made a part hereof, together with all rights, privileges, easements and appurtenant benefits relating thereto and all improvements located thereon (the “**Property**”):

SUBJECT TO: the matters set forth on **Exhibit B** attached hereto and made a part hereof.

AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Affidavit Exempt pursuant to ARS § 11-1134(A)(3).

**[SIGNATURE AND NOTARY PAGE FOLLOWS]**

**GRANTOR:**

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

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

**ATTEST:**

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

STATE OF ARIZONA       )  
                                      )  
County of Pima            )

The foregoing instrument, Special Warranty Deed, consisting of \_\_\_\_\_ pages, including this page and exhibits, was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the Chairman of Rio Nuevo Multipurpose Facilities District, an Arizona tax levying special facilities district, on behalf of the district.

WITNESS my hand and official seal.

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

(Affix Notary Seal Here)



**Exhibit A**

**TO LANDLORD'S SPECIAL WARRANTY DEED**

Legal Description of Property on following \_\_\_\_ pages

**Exhibit B**

**TO LANDLORD'S  
SPECIAL WARRANTY DEED**

Permitted Exceptions

## EXHIBIT G

### (Form of Tenant's Special Warranty Deed)

#### WHEN RECORDED, RETURN TO:

Rio Nuevo Multipurpose Facilities District  
Attention Chairman Fletcher McCusker  
1703 E. Broadway Blvd.  
Tucson, Arizona 85719

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#### SPECIAL WARRANTY DEED

For good and valuable consideration, **THE CADENCE APARTMENTS, LLC**, a Delaware limited liability company ("**Grantor**"), does hereby convey to **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**, an Arizona tax levying special facilities district ("**Grantee**"), that certain real property situated in Pima County, Arizona, and legally described on **Exhibit A** attached hereto and made a part hereof, together with all rights, privileges, easements and appurtenant benefits relating thereto and all improvements located thereon (the "**Property**"):

SUBJECT TO: the matters set forth on **Exhibit B** attached hereto and made a part hereof.

AND THE GRANTOR hereby binds itself and its successors to warrant and defend the title against the acts of the Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Affidavit Exempt pursuant to ARS § 11-1134(A)(3).

**[SIGNATURE AND NOTARY PAGE FOLLOWS]**


**GRANTOR:**

**THE CADENCE APARTMENTS, LLC,**  
a Delaware limited liability company

By:

Name:

Its:

  
\_\_\_\_\_  
**Chuck Bond**  
\_\_\_\_\_  
Authorized Signatory

Date of Execution: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

County of \_\_\_\_\_ )

*See attached CA acknowledgement*  
The foregoing instrument, Special Warranty Deed, consisting of \_\_\_\_\_ pages,  
including this page and exhibits, was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of **THE CADENCE**  
**APARTMENTS, LLC**, a Delaware limited liability company, on behalf of the company.

WITNESS my hand and official seal.

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

(Affix Notary Seal Here)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Contra Costa )

On August 25, 2022 before me, Nancy Holian, Notary Public  
(insert name and title of the officer)

personally appeared Chuck Bond,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

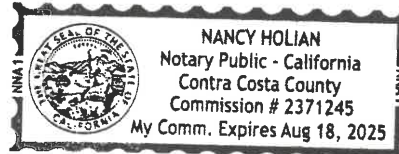
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



**Exhibit A**

**TO TENANT'S SPECIAL WARRANTY DEED**

Legal Description of Property on following \_\_ pages

**Exhibit B**

**TO TENANT'S  
SPECIAL WARRANTY DEED**

Permitted Exceptions

## EXHIBIT H

### (Form of Memorandum of Lease)

When Recorded Return To:  
Mark Collins  
Gust Rosenfeld PLC  
One S. Church Avenue, Suite 1900  
Tucson, AZ 85701-1627

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### MEMORANDUM OF LEASE

DATE: \_\_\_\_\_, 20\_\_

PARTIES: **RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT**,  
a tax levying special facilities district of the State of Arizona  
1703 E. Broadway Blvd.  
Tucson, Arizona 85719 ("Landlord")

**THE CADENCE APARTMENTS, LLC**,  
a Delaware limited liability company  
1095 E. 2100, Suite 110  
Salt Lake City, UT 84106  
("Tenant")

1. Landlord has leased to Tenant, and Tenant has leased from Landlord, pursuant to a Triple Net Government Property Lease dated \_\_\_\_\_, 20\_\_ (the "Lease"), certain land more particularly described on Exhibit A attached hereto (the "Premises").

2. 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").

3. The term of the Lease is for an Initial Term of 25 years from the Commencement Date (which occurs upon receipt of a permanent Certificate of Occupancy) unless terminated or cancelled earlier in accordance with the terms of the Lease.

4. The Lease contains an option to purchase in favor of the Tenant regarding the Premises.



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

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

SIGNATURES ON FOLLOWING PAGES

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

**“Landlord”**

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

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

ATTEST:

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

STATE OF ARIZONA       )  
  )  
County of Pima        )

The foregoing instrument, Memorandum of Lease, consisting of \_\_\_\_\_ pages, including this page and exhibits, was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the Chairman of Rio Nuevo Multipurpose Facilities District, an Arizona tax levying special facilities district, on behalf of the district.

WITNESS my hand and official seal.


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

(Affix Notary Seal Here)

**"Tenant"**

**THE CADENCE APARTMENTS, LLC,**  
a Delaware limited liability company

By:  
Name:  
Its:

  
\_\_\_\_\_  
**Chuck Bond**  
\_\_\_\_\_  
Authorized Signatory

Date of Execution: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) )  
County of \_\_\_\_\_ )

*see attached CA acknowledgment*  
The foregoing instrument, Memorandum of Lease, consisting of \_\_\_\_\_ pages,  
including this page and exhibits, was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of **THE CADENCE**  
**APARTMENTS, LLC**, a Delaware limited liability company, on behalf of the company.

WITNESS my hand and official seal.

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

(Affix Notary Seal Here)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Contra Costa )

On August 25, 2022 before me, Nancy Holian, Notary Public  
(insert name and title of the officer)

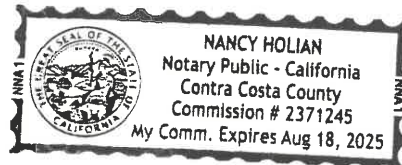
personally appeared Chuck Bond,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



**Exhibit A to Memorandum of Lease**