AGREEMENT TO PROVIDE ECONOMIC BENEFITS

For reference this Agreement to Provide Economic Benefits ("**Agreement**") is dated February ___, 2022 ("**Reference Date**"). This Agreement is by and between Pueblo Center Partners, LLP, an Arizona limited liability partnership ("**Developer**") and Rio Nuevo Multipurpose Facilities District, a special taxing district of the State of Arizona (the "**District**"). The Developer and the District are sometimes referred to in this Agreement collectively as the **"Parties"** or individually as a **"Party."**

RECITALS:

A. The District 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 that commence at A.R.S. §48-4201 *et seq.* A "District" formed under these statutes is defined as "... any county stadium district established pursuant to §48-4202, subsection A, B or C." §48-4201(3). The voters who authorized formation of the District authorized the District to receive an incremental portion of State-shared funds derived from transaction privilege taxes (i.e. sales tax called ***"TIF Funds"***) collected from within a particular portion of the District boundaries ("**TIF Boundaries**").

B. Developer holds fee title to the real property and improvements generally located at 181 W. Broadway Boulevard, Tucson Arizona and certain adjacent parcels all of which are more specifically described in attached Exhibit A (collectively the "**Property**"). The Developer is in the process of reconfiguring, renovating and modernizing the Property for operation as a convention center hotel (the "**Project**").

C. The entirety of the Property and the Project lies within the District's TIF Boundaries.

D. The Developer requested the District's assistance in supporting the parking aspect of the Project by subsidizing the Project's parking requirements at the parking facility being constructed by the District on Lot C of the Tucson Convention Center (the "**Lot C Parking Garage**").

E. Believing that the Project will benefit downtown Tucson in general and in particular other properties in downtown that are owned by the District, during its December the District's Board of Directors ("**Board**") voted to grant the Developer's request.

F. The purpose of this Agreement is to detail the economic incentive that the District has agreed to provide to the Developer.

AGREEMENTS

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and in consideration of the mutual covenants, promises and agreements contained herein, the District and the Developer agree as follows:

1) **<u>Recitals.</u>** The Parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.

2) **Definitions**. In this Agreement, unless a different meaning clearly appears from the context:

a) **"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 venture associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

b) **"Applicable Laws"** means 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 development of the Property from time to time.

c) **"Third Party"** means any person other than a Party or an Affiliate of a Party.

3) **Developer's Minimum Requirements**. To be entitled to the District's economic benefits provided herein, the Developer shall at all times satisfy the following "**Minimum Requirements.**"

a) **Substantial Completion of the Project**. Subject to delays in completing the Project which are beyond Developer's reasonable control as described in Section 8 hereof, it is anticipated that the Project will be substantially completed by December 31, 2024; ("**Substantial Completion**")]. Substantial Completion shall be deemed to have occurred when the Developer has obtained a temporary certificate of occupancy from the City of Tucson ("**City**") to occupy and operate any portion of the Project.

b) **Operation of the Project**. At all times after the Substantial Completion of the Project the Developer (or its successors, assigns or leasees) shall occupy and operate the Project.

c) **Conditions Precedent**. These Minimum Requirements are express conditions precedent to the obligation of the District to provide the Parking Incentive (as defined below).

4) **District's Findings**. The District has determined that Developer's satisfaction of the Minimum Requirements (i) will benefit the District and the City in numerous ways, including, without limitation, (A) increasing transaction privilege tax revenues and other revenues, (B) increasing the City's employment base, (C) stimulating further economic development, and (D) otherwise improving or enhancing the economic welfare of the District's primary component, the Tucson Convention Center; (ii) is not likely to occur (or to occur at this time and/or in this manner) without the benefits provided in this Agreement; and (iii) demonstrates the potential to generate revenues and other benefits (both tangible and intangible) to the District that outweigh or are not disproportionate to the costs associated with these benefits.

5) **Economic Incentive for the Developer.** Based upon the District's findings and the Developer's continuing satisfaction of the Minimum Requirements, the District will provide the following "**Parking Incentive**" to the Developer as follows:

a) Commencing upon the Substantial Completion of the Project and continuing for a period of twenty-four consecutive months the District will provide the Developer on Lot C of the Tucson Convention Center ("**Lot C Garage**") with up to 150 parking spaces per 24 hour period free of charge at the Lot C Garage (generically the "**Initial Parking Incentive**").

b) Upon the termination of the Initial Parking Incentive, the District will thereafter provide the Developer with up to 150 parking spaces per 24 hour period at the greater of $15 per space or a rate equal to the then average market rate for covered garage spaces in the City of Tucson Central Business District (the "Final Parking Incentive"). If the parties cannot agree upon the market rate for any year, then each party will select a commercial real estate broker with experience in downtown Tucson commercial properties and if the brokers cannot agree upon a market rate, then the brokers shall select a third qualified commercial real estate broker to establish the market rate and such determination shall be final and binding. During the Final Parking Incentive period, at least 75 of the 150 parking spaces will be in the Lot C Garage and the remaining 75 parking spaces may be in the Lot C Garage or any other garage owned or operated by the District on the grounds of the Tucson Convention Center.

6) **Default, Cure & Remedies.**

a) If either Party fails to perform its obligations under this Agreement and such failure continues for a period of 30 days after written notice thereof from the other Party (the **"Cure Period"**), such failure shall constitute a default under this Agreement (a **"Default"**); provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform its obligations so long as such Party commences performance or compliance within said 30 day period and diligently proceeds to complete such performance. Any notice of an alleged Default shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured. If a Default is not cured within the Cure Period, the non-defaulting Party shall have the remedies set forth in Section 7(b) or Section 7(c) of this Agreement, as applicable.

b) **District Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by the Developer in accordance with this Agreement, the District's sole and exclusive remedies shall consist of and be limited to the following:

i) The District may recover from Developer any Parking Incentive payments made during the period of any properly noticed and uncured Default and cease all future Parking Incentives if such Default continues for 30 days or more after the Cure Period unless additional time is required to cure such Default as set forth herein.

ii) All such remedies shall be cumulative and not exclusive of one another except as provided in this Agreement and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

c) **Developer's Remedies.** Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by the District in accordance with the notice period and Cure Period provisions of this Agreement, the District expressly acknowledges and agrees that Developer may seek specific performance, an injunction, special action, declaratory relief or other similar relief requiring the District to undertake and fully and timely perform its obligations under this Agreement and may seek compensatory damages only from the District and may not seek or obtain any other form of damages of any kind or nature.

d) **Limitation on Damages.** Claims for damages (when and if permitted) shall be limited to actual damages as of the time of entry of judgment. The District and Developer each hereby waive any and all rights to seek or receive punitive, multiple, exemplary or other damages.

e) **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by the doctrine of waiver.

7) **Representations and Warranties.**

a) Developer represents, warrants, and covenants to the District that:

i) **Organization.** Developer is a limited liability partnership duly organized, validly existing and in good standing under the laws of the State of Arizona, and has the power, right and authority to enter into this Agreement, and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Agreement shall constitute a legal, valid and binding obligation of Developer, enforceable against it in accordance with the terms and conditions contained herein.

ii) **Performance.** Developer will execute and acknowledge when appropriate all documents and instruments and take all actions reasonably necessary to implement and evidence this Agreement and shall timely perform all of its obligations under the Lease.

iii) **Litigation.** As of the date of this Agreement, Developer knows of no litigation, proceeding or official investigation contesting the powers of Developer or its officers with respect to this Agreement, including Developer's execution, delivery and performance hereof, that has not been disclosed in writing to the District.

iv) **Contracts.** Except as provided in this Agreement, neither this Agreement nor anything required to be done hereunder, violates or shall violate any contract or agreement to which Developer is a party.

v) **Indemnification.** Upon the filing by any Third Party of any action at law or in equity or the assertion of any claim, cause of action or judicial or non-judicial proceeding relating or pertaining to Developer's performance or failure to perform its obligations under this

Agreement, whether or not Developer is a party to such claim, action or proceeding, Developer shall cause such action or proceeding (including all claims against the District, its directors, officers or employees) to be timely defended by counsel selected by Developer and acceptable to the District in its reasonable discretion; provided, however, that Developer shall not be required to defend or indemnify the District for and from any personal injury or property damage claim arising out of the operation of the garage by the District. The District shall fully cooperate in the defense of such action or proceeding in coordination with Developer's counsel, at Developer's sole cost and expense. The District may, in its sole discretion, select its own counsel to defend the District, at the District's own cost and expense. In addition to the foregoing, Developer shall indemnify, defend and hold the District, its Board Members, representatives, agents and employees, harmless for, from and against any liability, loss, claim, action or demand, including attorneys' fees and costs that may arise out of or is connected with the Developer's breach of any covenant, representation, warranty or term contained in this Agreement. Notwithstanding anything in this Agreement to the contrary, the obligations set forth in this Section 8(a)(v) shall survive termination or expiration of this Agreement for a period equal to the applicable statute of limitations period. Moreover, unless waiver would void an insurance policy, Developer waives subrogation rights against the District under any general liability insurance policy carried by Developer

vi) **No Consideration to Third Parties.** Developer has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

b) **The District.**

i) **Organization.** The District is a special taxing district of the State of Arizona duly organized, validly existing and in good standing under the laws of the State of Arizona and has the power, right and authority to enter into this Agreement and to consummate the transaction contemplated hereby, without the consent or joinder of any other party or order or approval of any court, and this Agreement shall constitute a legal, valid and binding obligation of the District, enforceable against the District in accordance with the terms and conditions contained herein.

ii) **Performance.** The District will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.

iii) **Litigation.** As of the date of this Agreement, the District knows of no litigation, proceeding, initiative, referendum or official investigation contesting the powers of the District or its officials with respect to this Agreement, including the District's execution, delivery and performance hereof, that has not been disclosed in writing to Developer.

iv) **Other Contracts.** Except as provided in this Agreement, neither this Agreement nor anything required to be done hereunder violates or shall violate any contract or agreement to which the District is a party.

v) **Indemnification.** The District shall indemnify, defend and hold Developer, its managers, members, representatives, agents and employees, harmless for, from and against any liability, loss, claim, action or demand, including attorneys' fees and costs that may arise out of or is connected with the District's breach of any covenant, representation, warranty or term contained in this Agreement. Unless waiver would void an insurance policy, the District waives subrogation rights against the Developer under any general liability insurance policy carried by the District. The District's indemnification provided in this Agreement shall survive the termination or expiration of this Agreement for a period equal to the applicable statute of limitations period.

c) **Limitation on Representations**. Except as expressly stated herein, no Party has made any representation regarding the validity, enforceability, tax effect or any other aspect of this Agreement.

8) **Enforced Delay**.

a) **Events Constituting Enforced Delay**. Whether stated or not, all periods of time in this Agreement are subject to this Section. Neither the District nor the Developer, as the case may be, shall be considered to have caused a Default, nor shall the Developer be deemed to have failed to satisfy the Developer's Minimum Requirements with respect to its obligations under this Agreement, in the event of a delay (an **"Enforced Delay")** due to causes reasonably beyond its control and without its fault, negligence or failure to comply with the Applicable Laws, including but not restricted to (i) acts of God, acts of the Federal or State government, acts of a Third Party, litigation or other action authorized by law concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby, fires, floods, pandemics, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, labor or material shortages, unreasonable delays by governmental action or inaction in processing development plans or building permits, 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 by any governmental body on behalf of any public, quasi-public or private entity, or declaration of moratorium or similar hiatus directly affecting the Property by any governmental entity; (ii) 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, unless it is shown that such Order is the result of the failure to comply with Applicable Laws by the Party claiming the delay; provided, however, that the contesting in good faith of any such Order shall not constitute or be construed or deemed as a waiver by a Party of Enforced Delay. In no event will Enforced Delay include any delay resulting from general economic or market conditions, from the unavailability of financing or financing on terms acceptable to the Developer, nor from the unavailability to the Developer for any reason of vendors, investors or lenders. It is understood and agreed that the Developer will bear all risks of delay which is not Enforced Delay.

b) **Notice of Enforced Delay**. 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 equal to the duration of the Enforced Delay. The Party seeking the benefit of this Section 8 shall, within 30 days after such Party knows or reasonably should know 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.

9) **General Provisions.**

a) **Waivers.** No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Unless expressly provided for in this Agreement, no waiver shall be binding unless executed in writing by the Party making the waiver. Any Party may waive any provision of this Agreement intended for its sole benefit; however, unless otherwise provided for herein, such waiver shall in no way excuse the other Party from the performance of any of its other obligations under this Agreement.

b) **Construction, Governing Law and Venue**. This Agreement shall be interpreted according to Arizona law and shall be construed as a whole and in accordance with its fair meaning and without regard to, or taking into account, any presumption or other rule of law requiring construction against the Party preparing this Agreement or any part hereof. Any dispute or controversy relating to this Agreement, including the breach and enforcement thereof, shall take place in the Superior Court of Pima County, Arizona.

c) **Time.** Time is strictly of the essence of each and every provision of this Agreement.

d) **No Commission.** Both Parties represent that no unpaid commission is outstanding with respect to this Agreement and each Party indemnifies the other against brokerage or commission claims arising out of the indemnifying Party's actions. The Parties acknowledge that the Developer's representative is Omar Mireles, and the District Directors Mark Irvin and Chris Sheafe are licensed Real Estate Brokers in the State of Arizona and members of the Board of Directors of the District. Neither Messrs. Mireles, Irvin nor Sheafe will be receiving any compensation under the terms of this Agreement.

e) **Attorneys' Fees.** If any action is brought by any Party in respect to its rights under this Agreement, the substantially prevailing Party shall be entitled to reasonable attorneys' fees and court costs as determined by the court, including attorneys' fees incurred prior to any court or enforcement action that relate to the enforcement hereof.

f) **Binding Effect.** This Agreement and all instruments or documents entered into pursuant hereto are binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

g) **Further Assurances and Documentation.** Each Party agrees in good faith to take such further actions and execute such further documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

h) **Time Periods.** If the time for the performance of any obligation under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

i) **Headings.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

j) **Entire Agreement.** This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties.

k) **Counterparts.** This Agreement may be executed by the exchange of faxed or electronic signatures and in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

l) **Approvals and Notices**. Any objection, approval, disapproval, demand, document or other notice ("**Notice**") that any Party may desire or may be obligated to give to any other Party shall be in writing and may be given by personal delivery, registered or certified mail (return receipt requested), email transmission (with delivery receipt) or by commercial courier to the Party, or its successors or assigns, to whom the Notice is intended at the address of the Party set forth below or at any other address as the Parties may later designate. Change of address by a Party shall be given by Notice as follows:

i) *If to the District:* Rio Nuevo Multipurpose Facilities District, 1703 E. Broadway Boulevard, Tucson, Arizona 85719, with a copy to Mark Collins, Esq., Gust Rosenfeld P.L.C. , One South Church Avenue, Suite 1900, Tucson, Arizona 85701.

ii) *If to Developer:* Omar Mireles and Humberto S. Lopez, C/O HSL Properties, Inc. 3901 E. Broadway Blvd., Tucson, Arizona 85711, with a copy to Ted Hinderaker, Hinderaker Rauh & Weisman, PLC 2401 E. Speedway Blvd., Tucson, Arizona 85719.

m) **Successors and Assigns.** All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties; provided, however, that the Developer's rights and obligations hereunder may be assigned or transferred only at any time the assignor is not in Default under any provision of this Agreement to a single person or entity that has acquired the entirety of such rights and obligations as a successor in interest to the Developer provided further that the successor has expressly and in writing for the benefit of the District assumed all of the obligations of the assignor under this Agreement. An assignee pursuant to an assignment or transfer made in compliance with all of the terms and provisions of this Agreement may be referred to as a **"Permitted Assignee."** Any assignment or transfer not made in compliance with all of the terms and provisions of the Agreement shall be void, and not voidable, and shall vest no rights in the purported assignee or transferee.

n) **Term**. Subject to the indemnification provisions of this Agreement, and unless otherwise agreed upon by the Parties, this Agreement shall terminate without further action upon the permanent closure or change of use of the Project, so it is no longer operated as a Hotel (the "Term"). Notwithstanding the foregoing, but subject to Section 8 hereof, if the Project has not been Substantially Completed by December 31, 2024, then this Agreement, without further act or notice required, shall expire and terminate, and the Parties shall have no rights or obligations hereunder.

o) **No Partnership; Third Parties**. Nothing contained in this Agreement shall create, or be deemed to create, any partnership, joint venture or other similar arrangement between the District and the Developer. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or standing to any cause of action hereunder; except that the protection of the indemnification provisions of this Agreement shall extend to all agents, attorneys, Board members, officers and employees of the District acting in the course and scope of their employment or engagement and all such persons shall be, and are intended to be, third party beneficiaries of such indemnification provisions.

p) **Limited Severability**. The Parties agree that in the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the District to do any act in violation of any Applicable Law), such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement provides essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further shall perform all acts and execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as and if reformed in accordance with this Section 10(p).

q) **No Liability of District Officials**. No director, officer, official, representative, agent, attorney or employee of the District shall be personally liable to the Developer, or to any successor in interest to the Developer, in the event of any Default by the District, or for any amount which may become due to the Developer or its successors, or with respect to any obligation of the District pursuant to this Agreement. Similarly, no partner, principal officer, official, representative, agent, attorney or employee of the Developer, shall be personally liable to the District, or to any successor in interest to the District, in the event of any Default by the Developer, or for any amount which may become due to the District or its successors, or with respect to any obligation of the Developer pursuant to this Agreement.

r) **Conflict of Interest.** This Agreement is subject to and may be terminated by the District in accordance with the provisions of A.R.S. §38-511.

s) **Israel Boycott** If and to the extent that ARS § 35-393 et seq.is applicable, the Developer certifies that it is not currently engaged in and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in ARS § 35-393.

SIGNATURES ON FOLLOWING PAGE

PUEBLO CENTER PARTNERS, LLP, an Arizona limited liability partnership

By HSL Pueblo Center Properties Limited Partnership
an Arizona limited partnership, its general partner

By Sonora Sun Management Limited Partnership, L.L.P.
an Arizona limited liability limited partnership, its general partner

By HSL Properties Financial Corporation
an Arizona corporation, general partner

By:____________________________
Omar Mireles, Vice President

Date: 2.17.22

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT

By:____________________________ Date: 2.18.22
Mark Irvin, Vice - Chairman

By:____________________________ Date: 2.18.22
Chris Sheafe, Treasurer

4335382

EXHIBIT A

Legal Description of Property

Parcel: 117-20-019C

Legal Description:
PUEBLO CENTER REDEVELOPMENT PROJECT
ARIZONA R-8 LOT I EXC SELY PTN THEREOF BLK
510&EXCRD