

**THIS DEVELOPMENT, FINANCING PARTICIPATION AND INTER-GOVERNMENTAL AGREEMENT NO. 1 (GAYLORD COMMUNITY FACILITIES DISTRICT)**, is entered into as of \_\_\_\_\_, 2008 (the "Agreement"), by and among the City of Mesa, Arizona, a municipal corporation organized and existing under the laws of the State of Arizona (the "**Municipality**"), Gaylord Community Facilities District, a community facilities district formed by the Municipality, and duly organized and validly existing, pursuant to the laws of the State of Arizona (the "**District**"), and Gaylord Mesa, LLC, a Delaware limited liability company duly formed and validly existing pursuant to the laws of the State of Delaware and duly authorized to do business in the State of Arizona (the "**Owner**") who owns or will own in fee title the real property in the District described in Exhibit "A" hereto (the "**Property**").

**WITNESSETH:**

**WHEREAS**, pursuant to Title 48, Chapter 4, Article 6, Arizona Revised Statutes (the "Act") and Section 9-500.05, Arizona Revised Statutes, the Municipality, the District and the Owner may enter into this Agreement as a development agreement to specify, among other things, conditions, terms, restrictions and requirements for "public infrastructure" (as such term is defined in the Act) and the financing of public infrastructure pursuant to the Act, and this Agreement is consistent with the Municipality's general plan applicable to the Property on the date hereof; and

**WHEREAS**, the Owner plans to construct upon the portion of the Property described in Exhibit "B" hereto (the "**Convention Center Site**") public infrastructure consisting of a convention center, supporting infrastructure and all necessary or desirable appurtenances thereto (the "**Convention Center**"); and

**WHEREAS**, in accordance with the Pre-Annexation Development Agreement by, between and among the City, Gaylord Mesa, LLC and DMB Mesa Proving Grounds dated November \_\_\_\_, 2008 and recorded in the Official Records of Maricopa County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2008 (the "**PADA**"), the Owner has conveyed or will convey the Convention Center Site and the improvements thereon, whether existing or to be constructed, to the Municipality pursuant to a special warranty deed and has leased or will lease the Convention Center Site and the improvements thereon back from the Municipality pursuant to the Development Lease (Gaylord Convention Center Property & Gaylord Convention Center Improvements) between the City and Gaylord Mesa, LLC dated November \_\_\_\_, 2008 (the "**Convention Center Lease**"); and

**WHEREAS**, notwithstanding the prior conveyance of the Convention Center to the Municipality the parties intend that a portion of the cost of the Convention Center may hereafter be paid by the District to the Owner from funds available to the District as provided herein, as the payment for the acquisition of the Convention Center by the District for transfer to the Municipality; and

**WHEREAS**, the Municipality, the District and the Owner have determined to specify in this Agreement matters relating to the achievement of certain "public infrastructure purposes" (as such term is defined in the Act), including, but not limited to, the construction and acquisition of the Convention Center, as well as matters relating to competitive procurement of the construction of the Convention Center pursuant to applicable provisions of the Arizona Revised Statutes, the sale of Bonds (as such term is hereinafter defined), at the Owner's request, to finance such public infrastructure purposes and the acceptance of the Convention Center by the Municipality, all pursuant to the Act; and

**WHEREAS**, as provided herein, following the approval of a Bond Authorization (as such term is hereinafter defined), general obligation bonds ("**G.O. Bonds**") and/or special assessment lien bonds ("**Assessment Bonds**") and/or revenue bonds ("**Revenue Bonds**") of the District (collectively,

"Bonds") may be issued in an amount not to exceed two hundred million dollars (\$200,000,000) and/or other fees, charges or costs established, assessed and collected, as provided for in the Act, in the sole and absolute discretion of the District board of directors (the "District Board"), upon the submittal to the District Board of a Report (as such term is hereinafter defined) as required under, and in accordance with, this Agreement and the Act, to provide monies for the Convention Center as described in the general plan of the District (the "General Plan") as approved by the Municipality and the District in their sole and absolute discretion; and

**WHEREAS**, as provided herein, the District Board may, in its sole and absolute discretion, upon the submittal to the District Board of a Report as provided herein, call and conduct a G.O. Bond election, collect an *ad valorem* tax, collect user fees, levy the Assessments (as such term is hereinafter defined) and/or collect other fees and charges, and issue and sell G.O. Bonds payable from *ad valorem* taxes, Assessment Bonds payable from the Assessments and/or Revenue Bonds payable from fees and charges; and

**WHEREAS**, pursuant to the Act, the District may enter into this Agreement with the Owner with respect to the construction, acquisition and financing of the Convention Center, and potentially to obtain credit enhancement for, and process the disbursement and investment of proceeds of, any Bonds or other monies of the District; and

**WHEREAS**, pursuant to the Act and Title 11, Chapter 7, Article 3, Arizona Revised Statutes (the "Intergovernmental Agreement Act"), the District and the Municipality may enter into the specified sections of this Agreement as an "intergovernmental agreement" with each other for joint or cooperative action for services and to jointly exercise any powers common to them and for the purposes of the planning, design, inspection, ownership, control, maintenance, operation or repair of the Convention Center; and

**WHEREAS**, pursuant to Section 48-715, Arizona Revised Statutes and the CFD Guidelines (as such term is hereinafter defined), before constructing or acquiring any public infrastructure, the District Board is required, in each instance, to cause a report of the feasibility and benefits of the public infrastructure (referred to herein as a "Report") to be prepared by engineers and other qualified persons, which must include a description of the public infrastructure to be constructed or acquired and all other information useful to understand the project, a map showing, in general, the location of the project, an estimate of the cost to construct, acquire, operate and maintain the project, an estimated schedule for completion of the project, a map or description of the area to be benefited by the project, and a plan for financing the project; and

**WHEREAS**, nothing contained in this Agreement is intended to limit the District Board in exercising its judgment with respect to the issuance of Bonds or during the process of reviewing and approving or rejecting any Report;

**NOW, THEREFORE**, in the joint and mutual exercise of their powers, in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration, and subject to the conditions set forth herein, the parties hereto agree as follows:

## **ARTICLE I COMMUNITY FACILITIES DISTRICT**

**Section 1.1** **CFD Guidelines Apply.** Except as otherwise specifically provided in this Agreement, as may be amended from time to time, the District shall be subject to and governed by the

terms and provisions of the City of Mesa, Arizona, Policy Guidelines and Application Procedures for the Establishment of Community Facilities Districts, as amended from time to time (the "CFD Guidelines").

**Section 1.2 District Advisors.** The District may retain an independent financial advisor, legal advisor, underwriter, engineer and such other advisors and consultants, as may be reasonably necessary to assist the District in its operations, including but not limited to evaluating District budgets (each annual budget being referred to herein as a "District Budget"), any Report pertaining to the Convention Center, studies or evaluations pertaining to the District or the Convention Center to be financed by the District, District financing documents, District construction documents and similar matters ("District Consulting Costs").

**Section 1.3 District Records.** The District shall maintain its records and conduct its affairs in accordance with the Act, the laws of the State of Arizona and the CFD Guidelines.

**Section 1.4 Municipal Services Cost; Municipal Overhead.** During each fiscal year of the District, the Municipality shall be paid by the District for the reasonable cost of any services provided by the Municipality to the District ("Municipal Services Cost") and any Municipality administrative costs and expenses relating to the District ("Municipality Overhead"). At all times when the Owner is obligated to pay any portion of the District Administrative Expenses (as such term is hereinafter defined), which includes Municipality Overhead, the Owner shall have the right to review and comment to the Municipality concerning the allocation practices and methodologies used in determining and allocating Municipality Overhead and shall have the right, at the Owner's expense and during normal business hours, to review the Municipality's records to verify the costs and expenses of the Municipality attributed to the Municipality Overhead. If, within thirty (30) days of being notified of any Municipal Overhead to be charged to the District, the Owner objects in writing to such charge, the Owner, the District and the Municipality shall meet to consider and discuss the Owner's objection.

**Section 1.5 Public Procurement Requirement; No Liability of Municipality and District.**

(a) The Convention Center, if financed or expected to be financed with District monies or District Bond proceeds, shall be procured pursuant to Title 34 or other applicable provisions of the Arizona Revised Statutes and, as applicable, in accordance with the duly adopted public procurement policies of the Municipality, as the same are amended from time to time, consistent with Title 34 or other applicable provisions of the Arizona Revised Statutes (collectively referred to herein as the "Public Procurement Requirements"). The parties acknowledge that the Public Procurement Requirements provide for multiple methods of procurement (e.g., sealed bid, construction manager at risk, and design-build) and that the Owner shall have the discretion to select which of these methods shall be used, provided only that such method does comply with the requirements applicable to such method. Notwithstanding the foregoing, the parties agree that, if the Owner affirms in writing that the Owner will not request an issuance of Bonds by the District or other payment of public funds for the acquisition of the Convention Center or any part thereof, the Public Procurement Requirements shall not apply.

(b) Compliance with the Public Procurement Requirements shall be evidenced by the certification of the engineers of the Owner and the District (respectively, the "Owner Engineer" and the "District Engineer") in the form attached hereto as Exhibit "C" (as the same may be amended from time to time by the District Engineer) (the "Certificate of the Engineers").

(c) Each agreement or contract for construction or acquisition relating to the Convention Center (each a "Convention Center Construction Contract" and, collectively, the "Convention Center Construction Contracts") shall provide (i) that the respective contractors or vendors shall not have recourse, directly or indirectly, to the Municipality or, in the case of any agreement

or contract pursuant to which monies are advanced or paid by the Owner, to the District for the payment of any costs under such agreement or contract, or to the Municipality for any liability, claim or expense arising from such agreement or contract, and (ii) in the case of any agreement or contract pursuant to which the Owner will advance monies for the Convention Center, that the Owner shall have sole liability for payment under such agreement or contract for all such amounts.

**Section 1.6 Owner Control of Reports and Applications.** The Owner shall have the sole right to initiate or submit any application or Report to the District relating to the Convention Center; provided, however, that if the Owner neither leases the Convention Center from the Municipality nor owns the Convention Center, then the District Board shall have the right to initiate applications or Reports relating to the Convention Center. The District Board, exercising its sole and absolute discretion, may thereafter approve or reject the application or Report, including approving or rejecting the issuance of Bonds of the District.

**Section 1.7 Owner Withdrawal of Reports and Applications.** Notwithstanding anything to the contrary in Section 1.6, the Owner shall be permitted to withdraw any application or Report submitted by the Owner from consideration by the District at any time before the conclusion of the District's hearing thereon. In the event of such a withdrawal, the District Board shall not approve the application or Report or adopt any resolution which would effect an implementation of any part of the transaction described in such Report. The Owner shall be permitted to resubmit any such withdrawn application or Report or any application or Report which has been rejected by the District Board and then amended by the Owner, at such time as the Owner may, in its sole and absolute discretion, deem advisable.

**Section 1.8 Construction and Acquisition of Public Infrastructure.** Subject to the approval of the District, the Owner shall have the right to cause to be constructed, in accordance with the Public Procurement Requirements any part or all of the Convention Center, and thereafter submit a Report to the District requesting the District to pay for the acquisition of the Convention Center. If the District Board, exercising its sole and absolute discretion, approves the Report and, subject to Section 3.2(c), the District has or expects to have Bond proceeds or other District monies to pay the Project Price or Segment Price for acquisition of the Convention Center, the District may pay for the acquisition of the Convention Center pursuant to the terms of this Agreement. All construction of the Convention Center shall be performed, subject to applicable permit requirements for any improvements or buildings to be constructed, in a good and workmanlike manner and in compliance with all applicable standards, codes, rules, guidelines or regulations of the Municipality. The prior conveyance or dedication of easements, rights-of-way or public infrastructure as contemplated by this Agreement, the Convention Center Lease or a Report, shall not affect or proscribe the Owner's right to construct the Convention Center thereon or to be paid or reimbursed for such construction upon payment for acquisition of the Convention Center by the District. Nothing contained in this Section 1.8 shall limit or prohibit the District from paying for acquisition of the Convention Center pursuant to the terms and provisions of the Act and Article III of this Agreement. The Convention Center and the Convention Center Site shall be transferred in its entirety to the Municipality, or such lesser portion as is acceptable to the District and the Municipality, notwithstanding (a) the insufficiency of available Bond proceeds to pay the actual cost thereof, (b) the affirmation in writing by the Owner that the Owner will not request an issuance of Bonds by the District or other payment of public funds for the acquisition of the Convention Center or any part thereof, or (c) the extent of completion of the Convention Center.

## ARTICLE II CONSTRUCTION OF ACQUISITION PROJECTS BY THE OWNER

### **Section 2.1 Construction by Owner.**

(a) Subject to the other terms and provisions of this Agreement, the Owner at its sole cost and expense may cause to be constructed the Convention Center (also referred to as the "Acquisition Infrastructure," and on a project-by-project basis, an "Acquisition Project" or the "Acquisition Projects"), in accordance with plans and specifications approved by the Municipality (the "Plans and Specifications"). For purposes of this Agreement, the parties assume that the Acquisition Infrastructure shall consist of the Convention Center, and the terms "Acquisition Infrastructure," "Acquisition Project," "Acquisition Projects" and "Convention Center" may be used interchangeably. Approval of the Plans and Specifications by the Municipality shall not be a requirement under this Agreement if the Owner affirms in writing that the Owner will not request an issuance of Bonds by the District or other payment of public funds for the acquisition of the Convention Center. The standard for review of the Plans and Specifications by the Municipality under this Agreement shall be limited to whether the facility meets the requirements of the PADA for the Convention Center to be built as provided therein (the "PADA Convention Center Requirements").

(b) Each Acquisition Project shall be constructed in compliance with all applicable standards, codes, rules, guidelines or regulations of the Municipality for the same or comparable construction projects of the Municipality (to the extent applicable).

**Section 2.2** Reserved

**Section 2.3** District Approval of Contract Amount; Change Orders. The total bid amount of any Convention Center Construction Contract plus any other costs of the Acquisition Project that are not required to be procured pursuant to the Public Procurement Requirements shall be subject to the approval of the manager for the District or his designee ("District Manager") as set forth herein. If a Convention Center Construction Contract is procured following the District Board's approval of a Report pertaining to the applicable Acquisition Project, the total bid amount shall be deemed approved so long as the total initial contract amount does not exceed the estimated cost of the Acquisition Project set forth in the approved Report. Any single change order increasing the amount of the Convention Center Construction Contract by more than ten percent (10%) of the original contract amount or materially modifying the scope of the contract shall be subject to approval by the District Manager, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be certified to in the Certificate of the Engineers. In addition, any single change order increasing the total amount of the Convention Center Construction Contract by more than twenty-five percent (25%) of the original contract amount or materially modifying the scope of the work shall be subject to approval by the District Board at its next regularly scheduled meeting. Any increase in cost caused by a change order shall be the sole responsibility of the Owner provided that any increase in cost that is the subject of a change order that is approved under this Section 2.3 may be included by the Owner in any applicable Project Price or Segment Price (as such terms are hereinafter defined) pursuant to Section 3.2 hereof. Approval of any change order by the District Manager or the District Board shall not be a requirement under this Agreement if the Owner affirms in writing that the Owner will not request an issuance of Bonds by the District or other payment of public funds for the acquisition of the Convention Center.

**Section 2.4** Owner to Bear Risks. The Owner shall bear all risks, liabilities, obligations and responsibilities under each Convention Center Construction Contract and all risk of loss of or damage to any Acquisition Project (or applicable part thereof) occurring prior to the time of the District's acquisition and the acceptance by the Municipality or other governmental body, as applicable, of such Acquisition Project (or applicable part thereof).

**ARTICLE III**  
**ACQUISITION OF ACQUISITION PROJECTS FROM THE OWNER**

**Section 3.1 Acquisition of Projects.**

(a) Subject to the other terms and provisions of this Agreement and after the District Board's approval of a Report pertaining to an Acquisition Project, the Owner shall sell to the District, and the District shall acquire from the Owner, such Acquisition Project, as a whole (the entire Acquisition Project) or, if applicable, in completed, discrete portions as determined by the District Engineer and the District Manager and in accordance with the Plans and Specifications (a "Segment"). The price for the Acquisition Project or, if applicable, each Segment (the "Project Price" or the "Segment Price," as applicable) shall be established as provided in Section 3.2 hereof. At the request or with the approval of the District, the Owner shall convey any acquired Acquisition Project or Segment(s) directly to the Municipality (subject to the consent of the Municipality) or, if provided for in the Report approved by the District Board, to any other governmental body specified in the Report, together with a direct assignment of any warranties, guarantees and bonds. Such conveyance may occur prior to acquisition by the District and prior to payment of any amounts therefor by the District.

(b) Any payment by the District for any such acquisition, whether the acquisition occurs before or after the sale and delivery of the Bonds, shall be financed only pursuant to Article V hereof.

(c) The Owner has not been and shall not be compensated for any Acquisition Infrastructure except as provided by this Agreement. The District shall not be liable for any payment or repayment to the Owner therefor except as provided by this Agreement.

(d) As of the date of this Agreement, no Acquisition Infrastructure has been conveyed or dedicated by the Owner or accepted by the District, Municipality or other governmental body or tendered for conveyance or dedication by the Owner or acceptance by the District, Municipality or other governmental body.

**Section 3.2 Project Price.**

(a) The Project Price for an Acquisition Project or the Segment Price for a Segment, as applicable, shall be equal to the sum of the amounts determined pursuant to the Public Procurement Requirements and approved pursuant to Section 2.3 hereof, plus any other amounts that are not required to be procured pursuant to the Public Procurement Requirements but that are approved pursuant to Section 2.3 hereof, and actually paid by the Owner (including any amount paid on account of any change orders approved or deemed approved pursuant to Section 2.3 hereof), for: (1) the design and/or engineering of the Acquisition Project or Segment by a person that is not the Owner or any person or entity that controls, is controlled by, or is under common control with the Owner (a "Non-Affiliated Party"), (2) the construction and/or installation of the Acquisition Project or Segment pursuant to the Convention Center Construction Contract for such Acquisition Project or Segment, (3) the inspection and supervision of the construction of the Acquisition Project or Segment by a Non-Affiliated Party, for performance under the Convention Center Construction Contract, and a reasonable construction management fee to a Non-Affiliated Party, and (4) other miscellaneous and incidental costs relating to the construction and/or installation of such Acquisition Project or Segment (including, without limitation, the costs of permits and staking) allowed by the Act and approved in the Report. If an Acquisition Project comprises more than one Segment and any cost component described in the preceding sentence is procured or otherwise determined with reference to the Acquisition Project as a whole, and without reference to particular Segments of the Acquisition Project (e.g., design, engineering, inspection and

supervision costs), such cost shall be proportionately allocated among the Segments comprising the Acquisition Project in a reasonable manner, subject to the approval of the District Manager, with a proportionate share of each such cost component being included in the applicable Segment Price. No amount shall be paid for the cost of the real property necessary for such Acquisition Project or Segment.

(b) The determination of that portion of the Project Price or the Segment Price described in Subsections 3.2(a)(1) through 3.2(a)(3) above shall be certified in the Certificate of the Engineers for the Acquisition Project or applicable Segment.

(c) The parties may agree to a Project Price or a Segment Price that is less than the amount otherwise determined in Subsection 3.2(a).

**Section 3.3 Payment of Project Price; Required Documents.** The District shall pay the Project Price or the Segment Price, as applicable, and acquire from the Owner, and the Owner shall accept the Project Price or the Segment Price, as applicable, and sell to the District each Acquisition Project or Segment, pursuant to Section 3.1 hereof, after receipt by the District Manager of the following with respect to such Acquisition Project or Segment, in form and substance reasonably satisfactory to the District Manager:

(a) the Certificate of the Engineers;

(b) the "Acknowledgement of Acquisition and Payment for Segment of Project" in substantially the form attached hereto as Exhibit "D" (as the same may be amended from time to time by the District) or such other form as may be reasonably required by the District, Municipality or other governmental body specified in the Report approved by the District Board;

(c) evidence that public access to the Segment or the Acquisition Project, as applicable, has been or will be provided;

(d) the assignment of all contractors' and materialmen's warranties and guarantees as well as payment and performance bonds;

(e) an acceptance letter issued by the District, Municipality or other governmental body specified in the Report approved by the District Board, if applicable, and by its terms subject specifically to recordation of the acquisition of the Segment or the Acquisition Project, as applicable, which is the subject of such letter, unless such recordation has previously occurred; and

(f) such other documents, instruments, or approvals as may reasonably be requested by the District Manager.

**Section 3.4 Required License or Use Right.** The District or Municipality shall provide any required license or other use right in respect of the Property, as necessary to permit the construction of any Segment or Acquisition Project.

#### ARTICLE IV [Reserved]

**ARTICLE V  
FINANCING OF ACQUISITION PROJECTS**

**Section 5.1 Authorization of Bonds.** Subject to Section 1.6 and Section 6.1 hereof, the Owner shall determine whether and when to pursue bond financing for the acquisition of the Convention Center, using one or more of the following financing methods: G.O. Bonds, Assessment Bonds and/or Revenue Bonds. At the Owner's request, and as provided for in Article VI of this Agreement, following the approval of a Bond Authorization (as such term is hereinafter defined), the District Board, in its sole and absolute discretion, may take all such action necessary for the District Board to issue and sell Bonds in an amount sufficient to pay the Project Price or, if applicable, the Segment Prices for Segments comprising an Acquisition Project that the District Board has determined the District shall acquire pursuant to Article III and as provided for in Section 5.2. The term "Bond Authorization" shall mean any G.O. Bond issuance, Assessment Bond issuance and/or Revenue Bond issuance approved pursuant to the appropriate bond election of the District's qualified electors pursuant to the Act and/or a resolution of the District Board, as applicable. Although the final decision to issue Bonds remains in the discretion of the District Board, it is the parties' intention to cooperate fully to finance a portion of the costs of the Convention Center, as contemplated herein, if the Owner requests that Bonds be issued and if the provisions for timely payments of the Bonds are reasonably satisfactory to the District Board.

**Section 5.2 Limited Liability of District; Payment from Bond Proceeds or Other Specific Revenue.**

(a) Until the sale and delivery of the Bonds issued for the purpose of acquiring an Acquisition Project or one or more Segments, or the receipt of other District revenues designated for such purpose in a Report approved by the District Board, the District shall have no obligation to pay the Project Price for such Acquisition Project or the Segment Price for any such Segment. Notwithstanding the foregoing, the Owner may convey or dedicate an Acquisition Project or any Segment which is part of such Acquisition Project to the District, the Municipality or other applicable governmental body prior to the sale and delivery of Bonds; in such event and subject to the acceptance of such Segment by the District, Municipality or other governmental body specified in the approved Report, the Project Price or the Segment Price (as applicable) shall be paid to the Owner if, as and when the proceeds of Bonds issued for such purpose are available. No representation or warranty is given by the District, or the District Board, that Bonds will be approved for issuance and sale by the District Board, can be sold by the District or that sufficient proceeds from the sale of the Bonds issued for the purpose of acquiring an Acquisition Project or any Segment, or from any other source of revenue to the District, shall be available to pay the Project Price or Segment Price, as applicable.

(b) As soon as possible after the sale and delivery of any Bonds issued for the purpose of acquiring an Acquisition Project or any Segment that has previously been conveyed or dedicated to, and accepted by, the District or the Municipality, or other applicable governmental body, or the receipt of other District revenues designated for such purpose in a Report approved by the District Board, the Project Price or the Segment Price (as applicable) shall be paid to the Owner from, and only from, the proceeds of the sale and delivery of the Bonds issued for such purpose or, if applicable, other District revenues designated for such purpose in a Report approved by the District Board. Payment of the Project Price or Segment Price (as applicable) for any Acquisition Project or Segment acquired after the sale and delivery of any Bonds issued for the purpose of acquiring such Acquisition Project or Segment, or the receipt of other District revenues designated for such purpose in a Report approved by the District Board, shall, upon satisfaction of the requirements of Section 3.3, be made from, and only from, the proceeds of the sale and delivery of the Bonds issued for such purpose or, if applicable, such other District revenues designated for such purpose in a Report approved by the District Board. Neither the



District nor the Municipality shall be liable to the Owner (or any contractor or assigns under any Convention Center Construction Contract) for payment of any Project Price or Segment Price, except the District shall be liable to the extent unencumbered proceeds of the sale of any Bonds issued for the purpose of acquiring an Acquisition Project or any Segment or, if applicable, other District revenues designated for such purpose in a Report approved by the District Board, are available for such purpose. The foregoing is not intended to limit the right of the Owner to payment from future Bond proceeds of any deficiency between the proceeds from the sale of Bonds issued for such purpose and the Project Price for an Acquisition Project or Segment Price for any Segment, as applicable, that is the subject of a Report approved by the District Board if the District thereafter finances such amount through the issuance and sale of additional Bonds, and the District and the Municipality shall reasonably cooperate with the Owner in preserving the right to any such future payment.

(c) If the Bonds are not issued or if the proceeds of the Bonds or other District monies collected specifically for acquisition of an Acquisition Project or any Segment are insufficient to pay the Project Price or all of the Segment Prices for the Segments (as applicable), there shall be no recourse to the District or the Municipality and the District and the Municipality shall have no liability with respect to the Project Price for the Acquisition Project or the Segment Prices for the Segments comprising the Acquisition Project except the District shall be liable for payment from the unencumbered proceeds of the sale of the Bonds or other District monies collected specifically for such purpose, if any. Nothing contained in this Section 5.2 shall obligate the Municipality to pay for any Acquisition Project or any Segment from any monies of the Municipality.

**ARTICLE VI  
ISSUANCE AND SALE OF BONDS AND OTHER  
OBLIGATIONS OF THE DISTRICT**

**Section 6.1 Report; Review by District Board; Financial Limits and Assurances.**

(a) Upon the submission of a Report, and upon a date established by the District Manager, the District Board may, in its sole and absolute discretion, take all such reasonable action necessary for the District to consider the approval or rejection of the Report. If the Report is approved, at the Owner's request, the District Board, in its sole and absolute discretion, may take all such reasonable action necessary to issue and sell Bonds for the public infrastructure purposes provided for in the Report, pursuant to the terms and conditions established by the District Board in connection with its approval of the Report (the "Approval") consistent with the CFD Guidelines, except as such CFD Guidelines are modified by this Agreement. Proceeds of the Bonds may be used for any purpose permitted by the Act with respect to the financing or refinancing of the Convention Center.

(b) Any Bonds may be sold in one or several series, in an amount sufficient (i) to pay the Project Price for an Acquisition Project or, if applicable, the Segment Prices for Segments comprising an Acquisition Project, in each case as established pursuant hereto and in the Approval, which shall be based on the estimated costs and expenses indicated in the Report or the Approval, (ii) to pay all other amounts indicated in the Approval and permitted under the Act, (iii) to pay all relevant issuance costs related to the applicable series of the Bonds and permitted under the Act, (iv) to pay capitalized interest for a period not in excess of that permitted by the Act and described in the Approval, and (v) to the extent permitted by law, to fund a debt service reserve fund in an amount not in excess of that permitted by the Act and described in the Approval.

(c) At the request of the Owner, the District may, in its sole and absolute discretion, issue the Bonds (i) in a public offering, if the Bonds receive one (1) of the three (3) highest ratings by a nationally recognized bond rating agency acceptable to the District Manager, or (ii) in denominations of

not less than one hundred thousand dollars (\$100,000) to qualified institutional buyers or accredited investors, if the Bonds do not receive such ratings.

(d) At the time of sale of the Bonds, if provided for in the Approval, the Owner shall provide or cause to be provided such reasonable financial assurances as the District Board determines, in its sole and absolute discretion, following consultation with the District Manager, legal counsel to the District and underwriter to the District, in such form and/or such amounts as may be necessary to pay certain costs and expenses associated with the Convention Center described in the Approval and/or to pay any costs and expenses of issuance of the Bonds that, in either case, are not paid or payable from the proceeds of the sale of the Bonds, or from other District revenues designated for such purpose in the Approval, because such proceeds are insufficient in amount for such purposes. The foregoing is not intended to limit the right of the Owner to be reimbursed for any amounts advanced in excess of the proceeds from the sale of the Bonds, or from other District revenues designated for such purpose in the Approval, if the District is able to, and does, finance such amount from other or future Bond proceeds or other District monies, and the District and the Municipality shall reasonably cooperate with the Owner in preserving the right to any such future reimbursement.

(e) Any G.O. Bond Election authority shall expire on January 1, 2020. The maturity of any Bond issued prior to such date may extend beyond January 1, 2020 as set forth in the pertinent Report or Approval and in the ballot approved at the election.

**Section 6.2 G.O. Bonds.**

(a) G.O. Bonds shall be general obligations payable from, among other sources, amounts collected from an *ad valorem* property tax.

(b) If G.O. Bonds are issued, the District shall annually levy and cause such *ad valorem* tax to be collected on all taxable property in the District which shall be sufficient, together with monies from other sources available to the District, to pay District Administrative Expenses and, when due, the debt service on all G.O. Bonds for the payment of which such *ad valorem* taxes have been pledged.

**Section 6.3 Assessment Bonds.**

(a) Assessment Bonds shall be special assessment lien bonds payable from, among other sources, amounts collected from the hereinafter described special assessment (referred to as originally levied and as thereafter may be reallocated as described herein as the "Assessments").

(b) (i) If Assessment Bonds are issued, the District shall levy and cause the Assessments to be collected which shall be sufficient, together with monies from other sources available to the District, to pay District Administrative Expenses and, when due, the debt service on the Assessment Bonds, pursuant to the procedures prescribed by the Act. From time to time, upon the request of the Owner or the assessed property owner submitted to the District Board and supported by such additional information as the District Board shall reasonably request, the District Board may modify the Assessments provided that such modification, as determined by the District Board in its sole discretion, does not materially impair the value of the collateral or materially differ from the lien-to-value ratio required pursuant to the Approval, and complies with the Act and all applicable law.

(ii) None of the Convention Center Construction Contracts applicable to the Acquisition Project or Segments shall be required to be procured or awarded as a prerequisite to the levying of the Assessments.

(iii) In order to prepay, from property owner payments, in whole or in part, the applicable portion of the Assessment, on any interest payment date, the following shall be paid in cash to the District: (A) the interest on such portion of the Assessment to the next date Bonds may be redeemed, plus (B) the unpaid principal amount of such portion of the Assessment rounded up to the next highest multiple of the lowest authorized denomination of the Bonds, plus (C) any premium due on such redemption date with respect to such portion, plus (D) any administrative or other fees charged by the District with respect thereto, less (E) the amount by which the reserve described in Section 6.3(d) may be reduced on such redemption date as a result of such prepayment.

(iv) In the event of nonpayment of the Assessments, the procedures for collection thereof and sale of the applicable portion of the Property prescribed by the Act shall apply.

(v) The Owner hereby acknowledges that lenders and other parties involved in financing future improvements on the Property may require that liens associated with the Assessment (or applicable portions thereof) be paid and released prior to accepting a lien with respect to any such financing.

(vi) This Agreement shall be construed to be an express consent by the Owner that (A) the District Board may designate the boundaries of an Assessment area, consistent with the Approval; and (B) the District may levy and collect the Assessment in amounts sufficient, together with monies from other sources available to the District, to pay the District Administrative Expenses and, when due, the debt service on the Assessment Bonds.

(c) At the time of sale of the Assessment Bonds, an appraisal in form and substance satisfactory to the District, in its sole and absolute discretion, and prepared by an appraiser designated as a Member Appraisal Institute (the "Appraisal") must show that the bulk wholesale value of each assessed parcel and lot located within any Assessment area (including any improvements constructed thereon) is worth at least six (6) times the principal amount of the Assessment Bonds.

(d) If provided for in the Approval, the amount of the Assessment Bonds and the "sale proceeds" thereof shall be established to include an amount sufficient to fund a reserve to secure payment of debt service on the Assessment Bonds for such period of time as the District Board determines, in its sole and absolute discretion, following consultation with the District Manager, legal counsel to the District and underwriter to the District. Payment of debt service on the Assessment Bonds from such reserve shall not effect a reduction in the amount of the Assessment, and any amount collected with respect to the Assessment thereafter shall be deposited to such reserve to the extent the Assessment is so paid therefrom.

#### **Section 6.4 Revenue Bonds.**

(a) Revenue Bonds shall be limited obligations payable from, among other sources, any revenues of the District, including user fees and charges, or other revenues to be collected by the Municipality in trust for the District and returned to the District.

(b) The District may prescribe and collect user fees or charges, as may be revised from time to time, to generate revenue sufficient, together with monies from other sources available to the District, to pay District Administrative Expenses and, when due, the debt service on all Revenue Bonds for the payment of which revenue has been pledged. The establishment or revision of any user fees or charges shall be identified and noticed concurrently with the annual budget process of the District and

shall be consistent with this Agreement, the Report, the Approval and any indenture or trust agreement under which such Revenue Bonds have been issued.

(c) If provided for in the Approval, the amount of the Revenue Bonds and the "sale proceeds" thereof shall be established to include an amount sufficient to fund a reserve to secure payment of debt service on the Revenue Bonds for such period of time as the District Board determines, in its sole and absolute discretion, following consultation with the District Manager, legal counsel to the District and underwriter to the District. Payment of debt service on the Revenue Bonds from such reserve shall not effect a reduction in the amount of user fees or charges levied, and any amount collected with respect to the user fees and charges thereafter shall be deposited to such reserve to the extent the user fees and charges are so paid therefrom.

**Section 6.5 Bond Requirements.** The following requirements are hereby established and required with respect to any financing by the District.

(a) Except as otherwise provided for in Section 6.1(c), or as otherwise provided in the pertinent Approval of the District Board, acting in its sole and absolute discretion (after consultation with the District Manager, legal counsel to the District and underwriter to the District), the Bonds shall be sold only to accredited investors (as defined in Rule 501(a), Regulation D as amended) or qualified institutional buyers (as defined in Rule 144A, as amended). Notwithstanding the above, the parties agree that upon meeting certain "coverage ratios" acceptable to the District, such Bonds may be sold by the owner thereof, or the District (if initial sale), as applicable to the general public. Unless otherwise set forth in the Approval, all Bonds will contain an appropriate legend with respect to transferability and suitability for assessment.

(b) Any disclosure document prepared in connection with the offer or sale of Bonds must clearly indicate that neither the Municipality nor the State of Arizona or any political subdivision of either (other than the District) shall be liable for the payment or repayment of any obligation, liability, bond or indebtedness of the District, and neither the credit nor the taxing power of the Municipality, the State of Arizona, or any political subdivision of either (other than the District) shall be pledged therefor.

(c) [Reserved]

(d) The Owner acknowledges that, in connection with the issuance of Bonds, each Obligated Person (as defined in Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934 (the "Rule")) shall, if required under the Rule, execute and deliver, and thereafter comply with and carry out all the provisions of, a "Continuing Disclosure Undertaking" with respect to the Bonds, which Continuing Disclosure Undertaking shall be in a form reasonably satisfactory to the District and the purchaser of the Bonds and that complies with the requirements of the Rule. "Obligated Person" shall include any entity liable for payment of ten percent (10%) or more of the debt service on any Bonds or such other entity as may be required by the District or bond counsel to the District, but shall exclude any entity excluded by the Rule or SEC interpretation of the Rule, as the same may be amended from time to time.

(e) The District may, in its sole and absolute discretion, condition the issuance of Bonds on the provision by the Owner of additional security for the timely payment of debt service on the Bonds.

**ARTICLE VII  
ACCEPTANCE BY THE MUNICIPALITY; DISTRICT  
ADMINISTRATION AND MAINTENANCE; APPLICABILITY  
OF THE INTERGOVERNMENTAL AGREEMENT ACT**

**Section 7.1 Acceptance by Municipality.** Upon satisfaction of the terms for acceptance set forth in this Agreement, the Segment(s) or Acquisition Project (as applicable) shall be accepted by the Municipality as set forth in the PADA. Although the Convention Center will be transferred to the Municipality prior to completion such transfer shall not constitute final acceptance thereof for purposes of this Agreement by the Municipality. The standard of acceptance for the purposes of this Agreement shall be limited to whether the facility, as completed, meets the PADA Convention Center Requirements.

**Section 7.2 District Expenses.**

(a) The term "District Administrative Expenses" shall include the reasonable operating and administrative costs and expenses of the District, including, but not limited to, the District Consulting Costs, the Municipal Services Cost and/or Municipality Overhead. Any Municipal Services Cost or charge of Municipality Overhead to the District shall be made by the Municipality pursuant to Section 1.4 of this Agreement.

(b) The term "District Maintenance Expenses" shall include maintenance and operational costs and expenses of any public infrastructure or part thereof operated or maintained by the District or the Municipality, excluding any Municipal Services Cost.

**Section 7.3 District Administrative Expenses.**

(a) [Reserved]

(b) [Reserved]

(c) (i) Unless District Administrative Expenses are collected in accordance with Article VI of this Agreement after Bonds have been issued, District Administrative Expenses shall be due and payable by Owner on or before the "Advance Payment Date," which shall be the date which is thirty (30) days prior to the first day of each fiscal year of the District (e.g., if the first day of the District's fiscal year is July 1, the Advance Payment Date would be June 1), provided that no such payment amount shall be deemed delinquent until the "Payment Delinquency Date," which shall be the first day of each fiscal year of the District (e.g., if the first day of the District's fiscal year is July 1, the Payment Delinquency Date would be July 1).

(ii) The proposed District Budget or other writing setting forth the budgeted District Administrative Expenses for any succeeding fiscal year of the District shall be provided to the Owner on or before the date which is thirty (30) days prior to the Advance Payment Date (e.g., if the Advance Payment Date is June 1, on or before May 2). If the proposed District Budget or other writing is timely provided, the Owner shall pay or cause to be paid the budgeted District Administrative Expenses for the succeeding fiscal year on or before the Advance Payment Date. If the proposed District Budget or other writing is not timely provided, the Owner shall be obligated to pay or cause to be paid an amount equal to the budgeted District Administrative Expenses for the then-current fiscal year plus any increase in District Administrative Expenses for the succeeding fiscal year known to the Owner or (for example, an increase in the premiums for the insurance carried by the District pursuant to Section 9.2, notification of which is provided to the Owner) on or before the Advance Payment Date. If thereafter, the proposed

District Budget or other writing is then provided, the Owner shall pay any amount not previously paid within ten (10) days.

(iii) If the District Administrative Expenses are not included in the annual *ad valorem* tax, user fee, Assessment or fee levy, and the Owner fails to pay or cause to be paid the District Administrative Expenses on or before the Payment Delinquency Date, the District Board may charge interest at a rate of seven percent (7%) on the amount of unpaid District Administrative Expenses that are due, until the Owner pays or causes to be paid such amount. Nothing in the foregoing is intended to, or shall, relieve the Owner from the obligation to timely pay, or act to waive or modify any rights or remedies of the District or the Municipality against the Owner under this Agreement on account of the Owner's failure to timely pay the District Administrative Expenses for such succeeding fiscal year, except as provided herein.

(d) [Reserved]

(e) Notwithstanding Subsections 7.2(a) or 7.2(b), the District Board may determine, in the pertinent Approval and in its sole and absolute discretion, that all or a portion of the maintenance, operation or administrative expenses of certain public infrastructure shall not be included in District Administrative Expenses or District Maintenance Expenses. Any Report submitted relating to the Convention Center shall clarify that no maintenance nor operation expenses shall be included, and may determine that no administrative expenses shall be included, in District Administrative Expenses or District Maintenance Expenses.

#### **Section 7.4 Expenses of Other Infrastructure.**

(a) [Reserved]

(b) Notwithstanding anything to the contrary in Section 7.3, the Owner shall not be obligated to pay any District Administrative Expenses, District Maintenance Expenses, Municipal Services Cost or Municipality Overhead for any public infrastructure acquired as a result of a Report submitted by the District or any party other than the Owner; provided, the Owner, as a member of a group of either taxpayers or assessed parcel owners who, as a result of a uniformly applied tax or assessment methodology, is liable for payments relating to improvements financed in response to a Report submitted by the District, shall have all rights and obligations of the other taxpayers or assessed parcel owners that are established by the proceedings, including the right to protest and the obligation to pay amounts properly assessed and/or levied.

**Section 7.5 Application of Provisions to Municipality.** Notwithstanding any other provision of this Agreement to the contrary, the provisions of the Recitals, Section 1.4, Section 3.1, Section 3.4, Article V, Article VI, Article VII, Article IX, and Sections 11.1 through 11.18, inclusive, are the only provisions that are effective for, from and against the Municipality for purposes of the Intergovernmental Agreement Act and as the Intergovernmental Agreement Act is intended to be applied for purposes of this Agreement.

### **ARTICLE VIII CONVEYANCE OF PROPERTY**

**Section 8.1 Conveyance.** At any time prior to the construction of the Convention Center, the Owner may convey to the Municipality, at no cost to the District or the Municipality, and the Municipality shall accept conveyance of the Convention Center Site on such terms as the Municipality and the Owner may agree.

**ARTICLE IX  
INDEMNIFICATION AND INSURANCE**

**Section 9.1 Indemnification.**

(a) The Owner (1) shall indemnify and hold harmless the Municipality and the District and each council member, director, trustee, partner, member, officer, official, independent contractor or employee thereof and each person, if any, who controls the Municipality and/or the District within the meaning of the Securities Act of 1933, as amended (hereinafter the Securities Act of 1933 and the Securities Exchange Act of 1934 are referred to as the "Securities Acts"), (any such person being herein sometimes called an "Indemnified Party") for, from and against any and all losses, claims, damages or liabilities, joint or several, relating to: (i) the formation, activities or administration of the District; (ii) the levy and collection of any District tax, Assessment, user fee or charge; (iii) the offer or sale of any Bonds; (iv) the claims of any contractor, vendor, subcontractor or supplier under any Convention Center Construction Contract; (v) the ownership, condition, use or operation of the Convention Center Site or any Acquisition Project; (vi) any breach by the Owner of this Agreement; or (vii) the carrying out of the provisions of this Agreement, including particularly but not by way of limitation (A) any Acquisition Project, (B) any claim, loss, lawsuit, administrative action or other challenge to which any such Indemnified Party may become subject, under the Securities Acts or any other statute or regulation at law or in equity or otherwise, including but not limited to losses, claims, damages or liabilities (or actions in respect thereof) arising out of or based upon any untrue statement or alleged untrue statement of a material fact set forth in any offering document relating to the Bonds, or any amendment or supplement thereto, or arising out of or based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein, in light of the circumstances in which they were made, not misleading in any material respect, or (C) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or alleged untrue statement or omission or alleged omission if such settlement is effected with the written consent of the Owner (which consent shall not be unreasonably withheld); and (2) shall, subject to the Owner's rights to defend in (c) below, reimburse any legal or other expenses reasonably incurred by any such Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action.

(b) Section 9.1(a) shall not be applicable to any loss, claim, damage or liability arising from the gross negligence or willful misconduct of any Indemnified Party. Notwithstanding anything herein to the contrary, Section 9.1(a) shall not be applicable to any loss, claim, damage or liability relating to: (i) the activities or administration of the District with respect to Bonds or public infrastructure that is not the result of a Report submitted by the Owner; (ii) the levy and collection of any tax, Assessment, or user fee or charge in order to provide for the payment of District Bonds which were not issued and sold as the result of a Report submitted by the Owner and approved by the District Board; (iii) the offer or sale of any Bonds which are not the result of a Report submitted by the Owner; or (iv) the claims of any contractor, vendor, subcontractor or supplier under any Convention Center Construction Contract which is not initiated through, or the subject of, an approved Report submitted by the Owner.

(c) An Indemnified Party shall, promptly after the receipt of notice of a written threat of the commencement of any action against such Indemnified Party in respect of which indemnification may be sought against the Owner, notify the Owner in writing of the commencement thereof and provide a copy of the written threat received by such Indemnified Party. Failure of the Indemnified Party to give such notice shall reduce the liability of the Owner by the amount of damages attributable to the failure of the Indemnified Party to give such notice to the Owner, but the omission to notify the Owner of any such

action shall not relieve the Owner from any liability that it may have to such Indemnified Party otherwise than under this subsection (c). In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the Owner of the commencement thereof, the Owner may, or if so requested by such Indemnified Party shall, participate therein or defend the Indemnified Party therein, with counsel reasonably satisfactory to such Indemnified Party and the Owner (it being understood that, except as hereinafter provided, neither the Owner nor the insurers shall be liable to any such Indemnified Party under this section for any legal or other expenses subsequently incurred by such Indemnified Party including having more than one counsel representing the Indemnified Parties in such action); provided, however, that unless and until the applicable insurer(s) undertake to defend any such action, the Owner shall have the right to participate at its own expense in the defense of any such action. If the Owner shall not have employed counsel to defend any such action or if an Indemnified Party shall have reasonably concluded that there may be defenses available to it and/or other Indemnified Parties that are different from or additional to those available to the Owner (in which case the Owner shall not have the right to direct the defense of such action on behalf of such Indemnified Party) or to other Indemnified Parties, the legal and other expenses, including the expense of separate counsel, incurred by such Indemnified Party shall be borne by the Owner or applicable insurer(s), provided that such Indemnified Party shall comply with the terms and conditions of the applicable insurance policy(ies), if any.

#### **Section 9.2 Insurance.**

(a) The District may maintain insurance against the errors and omissions of the District Board or the other representatives, agents or employees of the District and against loss, claims, damage or liability that can be covered by commercial general liability insurance and property insurance, such policies to be procured in such amounts and with such coverage as the District Board shall determine. The District and the Municipality may agree to provide any portion of such insurance through self insurance.

(b) From and after the acquisition of the Convention Center, the District, directly or through the Municipality, shall maintain in effect commercial general liability insurance with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence, provided that the District may satisfy such insurance requirements under a program of self insurance, directly or through the Municipality (with any deductible up to one hundred thousand dollars (\$100,000) being a District Administrative Expense).

(c) The premium for any such insurance policies, including any allocated cost of self insurance, shall be a District Administrative Expense. The allocated cost of self insurance shall not exceed a premium reasonably available on commercial policies providing comparable coverage.

(d) If and to the extent that the Owner provides insurance which extends to the District coverage reasonably satisfactory to the District, including a waiver of subrogation, then the District shall not obtain duplicate coverage as a District Administrative Expense.

### **ARTICLE X DEFINED TERMS**

For purposes of this Agreement, the following terms shall have the meanings specified in this Article X:

**"Acknowledgement of Acquisition and Payment for Segment of Project"** has the meaning given that term in Section 3.3(b) and in the form set forth in Exhibit "D".

**"Acquisition Infrastructure"** has the meaning given that term in Section 2.1(a).



"Acquisition Project" has the meaning given that term in Section 2.1(a).

"Act" has the meaning given that term in the First Recitals Paragraph.

"Advance Payment Date" has the meaning given that term in Section 7.3(c).

"Agreement" has the meaning given that term in the Introduction.

"Appraisal" has the meaning given that term in Section 6.3(c).

"Approval" has the meaning given that term in Section 6.1(a).

"Assessment Bonds" has the meaning given that term in the Fourth Recitals Paragraph.

"Assessments" has the meaning given that term in Section 6.3(a).

"Bond Authorization" has the meaning given that term in Section 5.1.

"Bonds" has the meaning given that term in the Fourth Recitals Paragraph.

"Certificate of the Engineers" has the meaning given that term in Section 1.5(b) and in the form set forth in Exhibit "C".

"CFD Guidelines" has the meaning given that term in Section 1.1.

"Continuing Disclosure Undertaking" has the meaning given that term in Section 6.5(d).

"Convention Center" has the meaning given that term in the Second Recitals Paragraph.

"Convention Center Construction Contract" has the meaning given that term in Section 1.5(c).

"Convention Center Lease" has the meaning given that term in the Third Recitals Paragraph.

"Convention Center Site" has the meaning given that term in the Second Recitals Paragraph and in Exhibit "B".

"District" has the meaning given that term in the Introduction.

"District Administrative Expenses" has the meaning given that term in Section 7.2(a).

"District Board" has the meaning given that term in the Fourth Recitals Paragraph.

"District Budget" has the meaning given that term in Section 1.2.

"District Consulting Costs" has the meaning given that term in Section 1.2.

"District Engineer" has the meaning given that term in Section 1.5(b).

"District Maintenance Expenses" has the meaning given that term in Section 7.2(b).

"District Manager" has the meaning given that term in Section 2.3.

"Enforced Delay" has the meaning given that term in Section 11.17.

"General Plan" has the meaning given that term in the Fourth Recitals Paragraph.

"G.O. Bonds" has the meaning given that term in the Fourth Recitals Paragraph.

"Indemnified Party" has the meaning given that term in Section 9.1(a).

"Intergovernmental Agreement Act" has the meaning given that term in the Seventh Recitals Paragraph.

"Municipal Services Cost" has the meaning given that term in Section 1.4.

"Municipality" has the meaning given that term in the Introduction.

"Municipality Overhead" has the meaning given that term in Section 1.4.

"Non-Affiliated Party" has the meaning given that term in Section 3.2(a).

"Obligated Person" has the meaning given that term in Section 6.5(d).

"Owner" has the meaning given that term in the Introduction.

"Owner Engineer" has the meaning given that term in Section 1.5(b).

"PADA" has the meaning given that term in the Third Recital Paragraph.

"PADA Convention Center Requirements" has the meaning given that term in Section 2.1(a).

"Payment Delinquency Date" has the meaning given that term in Section 7.3(c).

"Plans and Specifications" has the meaning given that term in Section 2.1(a).

"Project Price" has the meaning given that term in Section 3.1(a).

"Property" has the meaning given that term in the Introduction and in Exhibit "A".

"Public Procurement Requirements" has the meaning given that term in Section 1.5(a).

"Report" has the meaning given that term in the Eighth Recitals Paragraph.

"Revenue Bonds" has the meaning given that term in the Fourth Recitals Paragraph.

"Rule" has the meaning given that term in Section 6.5(d).

"Securities Acts" has the meaning given that term in Section 9.1(a).

"Segment" has the meaning given that term in Section 3.1(a).

"Segment Price" has the meaning given that term in Section 3.1(a).

## ARTICLE XI MISCELLANEOUS

**Section 11.1 Assignment and Transfer.** Subject to the provisions of Section 11.2, Owner shall have the right to assign Owner's rights under this Agreement in its entirety.

**Section 11.2 Assignment – Assumption Instrument.** This Agreement may only be assigned in accordance with the assignment provisions set forth in the PADA.

**Section 11.3 [Reserved]**

**Section 11.4 Further Assurances.** Each party hereto shall, promptly upon the request of any other, have acknowledged and delivered to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

**Section 11.5 Entire Agreement; Amendment; Construction.** This Agreement by and among the Municipality, the District and the Owner sets forth the entire understanding of the parties as to the matters set forth herein as of the date this Agreement is executed and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

**Section 11.6 Applicable Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona.

**Section 11.7 Waiver.** The waiver by any party hereto of any right granted to it under this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived under or by this Agreement.

**Section 11.8 Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

**Section 11.9 Cancellation; Section 38-511.** Pursuant to and for purposes of Section 38-511, Arizona Revised Statutes, the Municipality and the District may, within three (3) years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Municipality or the District, respectively, is, at any time while this Agreement is in effect, an employee or agent of the Owner in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement and may recoup any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Municipality or the District, respectively, from the Owner arising as the result of this Agreement. The Owner has not taken and shall not take any action which would cause any person described in the preceding sentence to be or become an employee or agent of the Owner in any capacity or a consultant to any party to this Agreement with respect to the subject matter of this Agreement.

**Section 11.10 Termination; Dissolution.** The term of this Agreement shall be as of the date of the execution and delivery hereof by each of the parties hereto and shall expire on the later of June 1,

2070 or payment in full or provision for payment in full of the Bonds; provided that, upon the agreement of the District, the Municipality and the Owner (and if Bonds have been issued, so long as payment in full or provision for payment in full of the Bonds has been made), this Agreement can terminate upon such date as the District, Municipality and the Owner agree. Notwithstanding the foregoing, if the Owner has not submitted and/or the District has not approved a Report leading to the issuance and sale of Bonds or the establishment of Assessments, fees or charges, and all amounts due and payable by the Owner to or on behalf of the Municipality and/or the District are paid in full, the Owner shall be entitled, at any time after the date of recordation of this Agreement, to submit a request for dissolution of the District to the District and the Municipality, whereupon, so long as the Owner has obtained all landowner consents that are required to effectuate such dissolution, as provided for in the Act, the obligations of the Owner under this Agreement shall terminate and be of no further force or effect, and the District may be dissolved in accordance with the Act. Upon dissolution of the District or termination of this Agreement, the parties shall record a memorandum of termination in form and substance satisfactory to the parties. The District may also be dissolved by the District Board if, on or after July 1, 2013, (a) the Owner has not commenced construction of the Convention Center or, if commenced, construction has ceased for a period of one (1) year without completion of the Convention Center, and (b) no Bonds have been issued and remain outstanding (unless the payment in full of such Bonds has been provided for).

**Section 11.11 Notices.** All notices, certificates or other communications hereunder (including in the Exhibits hereto) shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid addressed as follows:

If to the Municipality:

City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Manager  
Fax: (480) 905-1419

With copies to:

City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Attorney  
Fax: (480) 905-1419

If to the District:

Gaylord Community Facilities District  
c/o City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Manager

With copies to:  
Gust Rosenfeld P.L.C.  
201 East Washington Street  
Suite 800  
Phoenix, Arizona 85004-2327  
Attention: Keith Hoskins

If to the Owner:

Gaylord Mesa, LLC  
1 Gaylord Drive  
Nashville, Tennessee 37214  
Attention: Senior Vice President, Development and  
Design & Construction

With copies to:

Gaylord Entertainment Company  
1 Gaylord Drive  
Nashville, Tennessee 37214  
Attention: Vice President of Development

With copies to:

Gaylord Entertainment Company  
1 Gaylord Drive  
Nashville, Tennessee 37214  
Attention: Chief Financial Officer

With copies to:

Gaylord Entertainment Company  
1 Gaylord Drive  
Nashville, Tennessee 37214  
Attention: General Counsel

With copies to:

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, California 90071-1560  
Attn: Ursula Hyman

Any of the foregoing, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 11.12 Invalidity; Unenforceability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

**Section 11.13 Headings.** The headings or titles of the several Articles and Sections hereof and in the Exhibits hereto, and any table of contents appended to copies hereof and thereof, shall be solely for

convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to "Exhibits," "Articles," "Sections," and other subdivisions are to the corresponding Exhibits, Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Exhibit, Article, Section or subdivision hereof.

**Section 11.14 No Relief from Legal Responsibility.** This Agreement does not relieve any party hereto of any obligation or responsibility imposed upon it by law.

**Section 11.15 Recording.** No later than ten (10) days after this Agreement is executed and delivered by each of the parties hereto, the Municipality or the District shall cause to be recorded a copy of this Agreement with the County Recorder of Maricopa County, Arizona.

**Section 11.16 Terms Material and Contrary; No Merger.** Unless otherwise expressly provided, the representations, covenants, indemnities and other agreements contained herein shall be deemed to be material and continuing, shall not be merged and shall survive any conveyance or transfer provided herein.

**Section 11.17 Enforced Delay in Performance for Causes Beyond Control of Party.** Neither the Municipality, the District nor the Owner, as the case may be, shall be considered to be in default with respect to its obligations, if any, under this Agreement in the event of a delay (an "Enforced Delay") due to causes beyond its control and without its fault, negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, acts of a third party, fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain 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. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of all or any portion of the Property, from the unavailability of financing or financing on terms acceptable to Owner, from labor shortages, from any time required by the Municipality or the District to review, comment upon, or process any General Plan, Report or other submittal or approval, nor from the unavailability for any reason of particular materials or other supplies, contractors, subcontractors, vendors, investors or lenders desired by Owner. It is understood and agreed that Owner will bear all risks of delay which are not 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 of the Enforced Delay; provided that the party seeking the benefit of the provisions of this Section 11.17 shall, within thirty (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; provided, however, that if such party provides such notice more than thirty (30) days after such party knows of an such Enforced Delay, the length of the Enforced Delay shall be measured from the date which is thirty (30) days prior to such notice; and, provided further, that any 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.

**Section 11.18 Consent or Approval to be Reasonable.** Whenever the consent or approval of any party hereto, or of any agency therefor, shall be required under the provisions hereof, such consent or

approval shall not be unreasonably withheld, conditioned or delayed; however, the issuance of Bonds is always in the sole and absolute discretion of the Board.

**Section 11.19 E-Verify Compliance.** To the extent that A.R.S. § 23-214(b) is applicable, Owner and its Affiliates (as such term is defined in the PADA) shall comply, and be responsible for all non-compliance, with A.R.S. § 23-214(b).

[Signatures on following page.]

**IN WITNESS WHEREOF**, the officers of the Municipality and of the District have duly affixed their signatures and attestations, and the officers of the Owner their signatures, all as of the day and year first written above.

CITY OF MESA, ARIZONA

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the Municipality who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the Municipality.

\_\_\_\_\_  
Municipality Attorney

GAYLORD COMMUNITY FACILITIES DISTRICT

By: \_\_\_\_\_  
Chairman, District Board

ATTEST:

\_\_\_\_\_  
District Clerk

Pursuant to A.R.S. Section 11-952(D), this Agreement has been reviewed by the undersigned attorney for the District, who has determined that this Agreement is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

\_\_\_\_\_  
District Counsel



GAYLORD MESA, LLC, A DELAWARE LIMITED LIABILITY COMPANY

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

State of Arizona     )  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_, as Mayor of the City of Mesa, Arizona, a municipal corporation under the laws of the State of Arizona.

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

My commission expires:

\_\_\_\_\_

State of Arizona     )  
County of Maricopa    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_, as Chairman of the District Board of Gaylord Community Facilities District, an Arizona community facilities district.

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

My commission expires:

\_\_\_\_\_

State of Arizona       )  
County of Maricopa    )

On this day, personally appeared before me \_\_\_\_\_, the  
\_\_\_\_\_ of Gaylord Mesa, LLC, a Delaware limited liability company, who is known to  
me to be the person whose name is above subscribed, and after being first duly sworn, acknowledged  
upon her/his oath that she/he executed the foregoing for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal on \_\_\_\_\_, 200\_\_.

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

My commission expires:  
  
\_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**[TO BE ATTACHED UPON EXECUTION OF THE AGREEMENT]**

**EXHIBIT B**

**LEGAL DESCRIPTION OF CONVENTION CENTER SITE**

**[TO BE ATTACHED UPON EXECUTION OF THE AGREEMENT]**

EXHIBIT C

FORM OF CERTIFICATE OF THE ENGINEERS FOR  
CONVEYANCE OF ACQUISITION PROJECT OR SEGMENT OF ACQUISITION PROJECT

CERTIFICATE OF ENGINEERS FOR CONVEYANCE OF SEGMENT OF  
ACQUISITION PROJECT

*(insert description of Acquisition Project/Segment)*

STATE OF ARIZONA )  
COUNTY OF MARICOPA )  
CITY OF MESA ) ss.  
GAYLORD COMMUNITY )  
FACILITIES DISTRICT )

We the undersigned, being Professional Engineers in the State of Arizona and, respectively, the duly appointed District Engineer for Gaylord Community Facilities District (hereinafter referred to as the "District") and the engineer employed by Gaylord Mesa, LLC (hereinafter referred to as the "Owner"), each hereby certify for purposes of the Development, Financing Participation and Intergovernmental Agreement No. 1 (Gaylord Community Facilities District), dated as of \_\_\_\_\_ 1, 200\_\_ (hereinafter referred to as the "Agreement"), by and among the District, the City of Mesa, Arizona and the Owner that:

1. The Acquisition Project or Segment indicated above has been completed in accordance with the Plans and Specifications (as such term and all of the other initially capitalized terms in this Certificate are defined in the Agreement) and the Convention Center Construction Contract (as modified by any change orders permitted by the Agreement) for such Acquisition Project or Segment.

2. The Segment Price as publicly procured and including the cost of approved change orders for such Segment is \$ \_\_\_\_\_.

3. The Owner provided for compliance with the requirements for public procurement for such Acquisition Project or Segment as required by the Agreement (including, particularly but not by way of limitation, Title 34, Chapter 2, Article 1, Arizona Revised Statutes, as amended) in connection with award of the Convention Center Construction Contract for such Acquisition Project or Segment.

4. The Owner filed all construction plans, specifications, contract documents, and supporting engineering data for the construction or installation of such Acquisition Project or Segment with the Municipality.

5. The Owner obtained good and sufficient performance and payment bonds in connection with such Acquisition Project or Segment.

6. The Acquisition Project or Segment has been constructed on the Convention Center Site or in public rights-of-way or public easements and such Convention Center Site, rights-of-way or public easements are sufficient to operate and maintain such Acquisition Project or Segment.

DATED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_.

[P.E. SEAL]

By \_\_\_\_\_  
District Engineer

[P.E. SEAL]

By \_\_\_\_\_  
Owner Engineer

**EXHIBIT D**

**FORM OF ACKNOWLEDGEMENT OF ACQUISITION  
AND PAYMENT FOR SEGMENT OF PROJECT**

**ACKNOWLEDGEMENT OF ACQUISITION AND  
PAYMENT FOR SEGMENT OF ACQUISITION PROJECT**

*(Insert description of Acquisition Project/Segment)*

STATE OF ARIZONA )  
COUNTY OF MARICOPA )  
CITY OF MESA ) ss.  
GAYLORD COMMUNITY )  
FACILITIES DISTRICT )

KNOW ALL MEN BY THESE PRESENTS THAT:

\$ \_\_\_\_\_ ("the Owner"), acknowledges receipt of payment of \$ \_\_\_\_\_ from the Gaylord Community Facilities District, a community facilities district formed by the City of Mesa, Arizona (the "Municipality"), and duly organized and validly existing pursuant to the laws of the State of Arizona (the "District"), receipt of which is hereby acknowledged as payment for the acquisition of the following described property, being the subject of a District Development, Financing Participation and Intergovernmental Agreement No. 1 (Gaylord Community Facilities District), dated as of \_\_\_\_\_ 1, 200\_\_\_\_, by and among the Owner, the Municipality and the District and more completely described in such Development Agreement:

[Insert description of Acquisition Project/Segment]

together with any and all benefits, including warranties and performance and payment bonds, under the Convention Center Construction Contract (as such term is defined in such Development Agreement) or relating thereto, all of which are or shall be located on the Convention Center Site (as such term is defined in such Development Agreement) or within public rights-of-way, public utility or other public easements dedicated or dedicated by plat or otherwise free and clear of any and all liens, easements, restrictions, conditions, or encumbrances affecting the same, but subject to all reservations in patents, and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, leases, and liabilities or other matters as set forth on Exhibit I hereto.

Title to the Acquisition Project or Segment has previously been conveyed by the Owner to the Municipality and the Owner does hereby bind itself, its successors and assigns to warrant and forever defend, all and singular, the above-described property, subject to such exception(s) and reservation(s), unto the Municipality, its successors and assigns, against the acts of the Owner and all others.

The Owner binds and obligates itself, its successors and assigns, to execute and deliver at

the request of the Municipality any other or additional instruments of transfer, bills of sale, conveyances, or other instruments or documents which may be necessary or desirable to evidence more completely or to perfect the transfer to the Municipality of the above-described property, subject to the exception(s) and reservation(s) hereinabove provided.

This acquisition is made pursuant to such Development Agreement, and the Owner hereby agrees that the amounts specified above and paid to the Owner hereunder satisfy in full the obligations of the District under such Development Agreement and hereby releases the District from any further responsibility to make payment to the Owner under such Development Agreement for the acquisition of the Acquisition Project or Segment.

IN WITNESS WHEREOF, the Owner has caused this Acknowledgement to be executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said limited liability company.

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

\_\_\_\_\_  
Typed/Printed Name of Notary

[NOTARY SEAL]

My Commission Expires: \_\_\_\_\_



**EXHIBIT "F"**  
**(Special Warranty Deed – Resort No. 2)**

WHEN RECORDED, RETURN TO:

City of Mesa  
20 East Main Street, #750  
Mesa, Arizona 85211  
Attn: Real Estate Services Director

EXEMPT FROM AFFIDAVIT OF VALUE  
PURSUANT TO A.R.S. §11-1134(A)(3)

---

**SPECIAL WARRANTY DEED**

For the consideration of Ten Dollars and other valuable consideration, \_\_\_\_\_, a(n) \_\_\_\_\_ ("**Grantor**"), does hereby convey to the CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**Grantee**"), that certain real property ("**Property**") situated in Maricopa County, Arizona, legally described on **Exhibit "A"** attached hereto and made a part hereof, together with all rights and privileges appurtenant thereto.

RESERVING ONTO GRANTOR all rights contained in that certain PRE-ANNEXATION DEVELOPMENT AGREEMENT (Mesa Proving Grounds – Hospitality Facilities and Convention Center), dated \_\_\_\_\_, 20\_\_, between Grantee, DMB Mesa Proving Grounds, LLC, a Delaware limited liability company, and Gaylord Mesa, LLC, a Delaware limited liability company, recorded in the Official Records of Maricopa County, Arizona, as Instrument No. \_\_\_\_\_; and

SUBJECT TO: current taxes and assessments, reservations or exceptions in patents from the United States of America or in the act or acts authorizing the issuance thereof, unpatented mining claims, water rights, and claims or title to water, and all easements, rights-of-way, encumbrances, liens, covenants, conditions and restrictions, and all other matters as may appear of record and all matters that an accurate survey or physical inspection of the Property would reveal.

AND GRANTOR binds itself and its successors to warrant the title to the Property against its own acts and none other, subject to the matters above set forth.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**"GRANTOR"**

[NAME]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA)

)ss.

County of Maricopa )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 200\_, by  
\_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_, an  
\_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_

**ACCEPTANCE AND JOINDER:**

**"GRANTEE"**

CITY OF MESA, ARIZONA, an Arizona  
municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA )

)ss.

County of Maricopa )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 20\_\_\_\_, by  
the \_\_\_\_\_ of the CITY OF MESA, ARIZONA, an  
Arizona municipal corporation, on behalf of the City.

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

My Commission Expires:

\_\_\_\_\_

**EXHIBIT "A"**

**[TO BE ATTACHED UPON EXECUTION OF THE DEED]**

**EXHIBIT G**

**Resort No. 2 Lease  
(SEE ATTACHED)**

**DEVELOPMENT LEASE  
(Resort No. 2 Property & Resort No. 2 Improvements)**

**between**

**CITY OF MESA, ARIZONA  
an Arizona municipal corporation,**

**as Landlord**

**and**

\_\_\_\_\_,  
a \_\_\_\_\_,

**as Tenant**

## TABLE OF CONTENTS

	Page
1. DEFINITIONS.....	1
2. PREMISES .....	4
3. TERM .....	4
4. ABSOLUTE NET RENT .....	4
5. ADDITIONAL PAYMENTS .....	5
6. INSURANCE.....	7
7. SURRENDER.....	7
8. LANDLORD'S PERFORMANCE FOR TENANT.....	8
9. USES AND MAINTENANCE.....	8
10. COMPLIANCE.....	9
11. CONSTRUCTION, OWNERSHIP AND MANAGEMENT OF RESORT NO. 2 IMPROVEMENTS .....	9
12. IMPAIRMENT OF LANDLORD'S TITLE .....	10
13. INSPECTION .....	10
14. INDEMNIFICATION.....	11
15. DAMAGE OR DESTRUCTION.....	12
16. CONDEMNATION.....	13
17. ASSIGNMENT, SUBLETTING, MORTGAGE .....	14
18. EVENT OF DEFAULT BY TENANT.....	16
19. DEFAULT BY LANDLORD.....	17
20. SEVERABILITY.....	18
21. NOTICES.....	18
22. QUIET ENJOYMENT.....	19
23. ESTOPPEL CERTIFICATES .....	19
24. CONSENTS.....	20
25. LIMITATION OF LANDLORD'S LIABILITY.....	20
26. PADA.....	21
27. ENFORCED DELAY IN PERFORMANCE FOR CAUSES BEYOND CONTROL OF PARTY .....	21
28. OPTION TO PURCHASE THE PREMISES.....	22
29. COMPLIANCE WITH ENVIRONMENTAL LAWS .....	22
30. MISCELLANEOUS .....	25

**EXHIBITS**

- Exhibit "A"** Legal Description of Resort No. 2 Property
- Exhibit "B"** Depiction of Resort No. 2 Property
- Exhibit "C"** Insurance Requirements
- Exhibit "D"** Non-Disturbance and Recognition Agreement
- Exhibit "E"** Special Warranty Deed
- Exhibit "F"** Memorandum of Lease



**DEVELOPMENT LEASE**  
(Resort No. 2 Property & Resort No. 2 Improvements)

THIS DEVELOPMENT LEASE ("Lease") is entered into as of the \_\_\_ day of \_\_\_\_\_, 200\_\_ ("Effective Date"), by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation having its office at 20 E. Main Street, Mesa, AZ 85201 ("Landlord" or "City"), and \_\_\_\_\_, a(n) \_\_\_\_\_, having its office at \_\_\_\_\_ ("Tenant"), as successor in interest to DMB Mesa Proving Grounds, LLC, a Delaware limited liability company. Landlord and Tenant are sometimes collectively referred to in this Lease as the "Parties" or individually as a "Party". Capitalized terms used in this Lease shall have the meanings ascribed to them parenthetically or in Section 1 of this Lease.

**RECITALS:**

A. This Lease is the "Resort No. 2 Lease" referred to in the Pre-Annexation Development Agreement (Mesa Proving Grounds -- Hospitality Facilities and Convention Center), by and among Landlord, Gaylord Mesa, LLC, Delaware limited liability company, and DMB Mesa Proving Grounds, LLC, a Delaware limited liability company, dated \_\_\_\_\_, 2008, recorded in the Official Records of the Maricopa County Recorder as Instrument No. 2008-\_\_\_\_\_ (the "PADA").

B. The development of the Resort No. 2 Property and this Lease are in the best interests of the City and the health, safety and welfare of its residents. It is the intention of the Parties that this Lease comport with, and be subject to, the provisions of A.R.S. Section 42-6201 through 42-6210 relating to the Government Property Lease Excise Tax ("GPLET").

**ARTICLE I**

**COVENANTS:**

1. **DEFINITIONS.** For the purposes of this Lease, certain words shall have the meanings set forth below, or parenthetically in this Lease (e.g., "PADA" in Recital A). Other capitalized terms utilized in this Lease and not defined herein shall have the meanings ascribed to such terms in the PADA:

"Additional Payments": As defined in Section 5.1.

"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.

**"Applicable Laws"**: All laws, statutes, ordinances, orders, rules and regulations of any federal, state, county, municipal or other government agency or authority which apply to the Premises, this Lease, or the Parties, during the Term.

**"A.R.S."**: Arizona Revised Statutes, as amended.

**"Certificate of Occupancy"**: As defined in Section 11.4.

**"City"**: As defined in the first grammatical paragraph of this Lease.

**"Condemning Authority"**: As defined in Section 16.1.

**"Designated Mortgagee"**: As defined in Section 17.4.

**"Effective Date"**: As defined in the first grammatical paragraph of this Lease.

**"Enforced Delay"**: As defined in Section 27.

**"Event of Default"**: As defined in Section 18.1.

**"Environmental Laws"**: As defined in Section 29.1(a).

**"GPLET"**: As defined in Recital B.

**"Impositions"**: As defined in Section 5.1.

**"Landlord"**: As defined in the first grammatical paragraph of this Lease.

**"Mortgage"**: Any mortgage, deed of trust, or other financing arrangement on any or all of the Premises, and any collateral assignment of Tenant's leasehold interest and other rights under this Lease, held by a Mortgagee.

**"Mortgagee"**: As defined in Section 17.4.

**"Multiple Party"**: As defined in Section 30.8.

**"Net Rent"**: As defined in Section 4.1.

**"Non-Disturbance and Recognition Agreement"**: As defined in Section 17.4.

**"Opening Date"**: As defined in the PADA.

**"Order"**: As defined in Section 27.

**"PADA"**: As defined in Recital A of this Lease.

**“Premises”**: As defined in Section 2.

**“Purchase Option”**: As defined in Section 28.1.

**“Regulated Substances”**: As defined in Section 29.1(b).

**“Release”**: As defined in Section 29.1(c).

**“Removable Property”**: All personal property, furniture, furnishings, business or trade fixtures and equipment now or hereafter in or about the Premises, or any part thereof, which are not part of the Resort No. 2 Improvements to which the GPLET applies.

**“Resort No. 2 Improvements”**: All improvements situated on or within the Resort No. 2 Property and all improvements to be constructed on the Resort No. 2 Property

**“Resort No. 2 Property”**: As defined in Section 2.

**“Second Notice”**: As defined in Section 18.2.

**“Site Plan”**: As defined in Section 11.1.

**“Sublease”**: Any agreement, written or oral, by which Tenant gives any person any rights of use or occupancy of, or any benefit flowing from, the Premises or a portion thereof, including any permit, license or concession.

**“Tenant”**: As defined in the first grammatical paragraph of this Lease.

**“Term”**: The period beginning on the Effective Date and ending fifty (50) years from the first day of the first calendar month following the Opening Date.

**“Third Party”**: As defined in the PADA.

**“Title”**: As defined in Section 28.1.

2. **PREMISES**. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained herein, that certain land (the **“Resort No. 2 Property”**), as legally described on Exhibit “A” and depicted on Exhibit “B” attached hereto, together with the Resort No. 2 Improvements, and any and all other related rights and appurtenances thereto (collectively, the **“Premises”**).

3. **TERM**. The term of this Lease (**“Term”**) shall commence on the Effective Date, and, subject to Tenant’s Purchase Option, shall expire at 12:00 midnight on the last day of the Term, unless this Lease is sooner terminated as hereinafter provided.

4. **ABSOLUTE NET RENT**.

4.1 **Amount**. Tenant shall pay to Landlord, in such United States of America coin or currency as at the time of payment shall be legal tender for the payment of public and private debts, at Landlord’s address specified or furnished pursuant to Section 21, during the

Term a net annual rental ("Net Rent") in the amount of Five Thousand Dollars (\$5,000.00) per year.

**4.2 Payments.** Payments of Net Rent shall be made in annual installments in advance, without notice, on the first day of the month following the Effective Date, and on each anniversary thereafter until the expiration or termination of this Lease; provided, that Tenant may prepay any or all installments of Net Rent. Net Rent for any partial year at the end of the Term shall be prorated on a per diem basis.

**4.3 Rent Absolutely Net.** It is the purpose and intent of the Landlord and Tenant that the Net Rent payable hereunder shall be absolutely net to Landlord and in addition to all other payments to be made by Tenant as hereinafter provided, so that (i) this Lease shall yield to Landlord the Net Rent herein specified, free of any charges, assessments, impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or setoff by the Tenant, and Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or subject to any liability hereunder; (ii) 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 Term shall be paid by Tenant; (iii) the City shall incur no expense and be subject to no risk or liability of any kind or nature as a consequence of the City's approval of, and performance under, this Lease; and (iv) without limiting the general indemnity provisions of Section 14.1 of this Lease, Tenant shall pay, defend, indemnify and hold harmless Landlord for, from and against any such costs, risks, liabilities, expenses or obligations relating to maintenance and/or operation of the Premises, except those for which any claims against Landlord could have been asserted if Landlord were not the owner of the Premises or if Landlord were not a Party to this Lease.

**4.4 No Release of Obligations.** Except pursuant to a written 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 Term, whether foreseen or unforeseen, and however extraordinary 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. It is the intent of the Parties that all risk of loss hereunder be borne by Tenant.

**4.5 Non-Subordination.** Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) subject to the provisions of Section 12.4, any other liens or encumbrances hereafter affecting Tenant's interest in this Lease, unless otherwise agreed to by Landlord, in writing, in Landlord's sole and absolute discretion.

## **5. ADDITIONAL PAYMENTS.**

**5.1 "Additional Payments" Defined.** Tenant shall pay as additional payments during the Term, without notice (except as otherwise specifically provided herein) and without abatement, deduction or setoff (except as provided in Section 5.3), 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, all sums, impositions, costs, expenses and other payments and all

taxes, including personal property taxes, the rental taxes described in Section 5.2, the GPLET (subject to Section 5.6), general and special assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, 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 Term 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 all or part of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes referred to collectively herein as “**Additional Payments**” or “**Impositions**”) 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 Term before any fine, penalty, further interest or cost may be added thereto; and
- (b) any Imposition (including installment payments of Impositions) relating to a fiscal period of the taxing authority, a part of which period is included within the Term and a part of which is included in the period of time after the expiration of the Term 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 Term) shall be adjusted as of the expiration of the Term, so that Tenant shall pay that portion of such Imposition (or installment payment thereof) attributable to the Term and the then-owner of the Premises shall pay such Imposition for the period after expiration of the Term. In no event shall the City be responsible for any Imposition unless and until, after expiration or termination of the Lease, City is the fee title owner of the Premises free and clear of this Lease, Tenant’s Purchase Option, and any other claim or interest of Tenant.

**5.2 Rental Taxes.** Tenant shall pay to Landlord, with and in addition to annual Net Rent, all rent taxes, privilege taxes, sales taxes, occupancy taxes or like tax (but not any net income tax of Landlord), imposed on Landlord by any governmental unit on or measured by 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.

**5.3 Contest.** Tenant may contest the validity or amount of any Imposition, in which event Tenant may pay such amount under protest or defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after any deferred payment 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 approved by Tenant), which amount shall be applied by Landlord 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 which Landlord is required to pay, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon. At any time that Tenant hereunder is a Mortgagee or one of the parties to the PADA, unless such Tenant is in default hereunder or under the PADA, the requirements for deposits set forth in this Section shall be waived by Landlord.

**5.4 Assessment Reduction.** Tenant may endeavor at any time to reduce the amount or assessment of any Imposition. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent it is based on a payment made by or on behalf of Tenant.

**5.5 Hold Harmless.** Landlord shall cooperate with Tenant, but at no expense to Landlord, in any action or proceeding referred to in Sections 5.3 or 5.4 and, if required by law or any rule or regulation in order to make such action or proceeding effective, any such action or proceeding may be taken by Tenant in the name of the Landlord. Tenant shall pay, indemnify and hold harmless Landlord from all of Landlord's out-of-pocket Third Party costs, expenses (including attorney's fees), claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

**5.6 Government Property Lease Excise Tax.** As required under A.R.S. Section 42-6206, Tenant is hereby notified of its potential tax liability under the GPLET statutes (A.R.S. Section 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 the termination of Tenant's interest in this Lease and of its right to occupy the Premises. Landlord and Tenant shall perform any administrative acts (that do not require approval of the Mesa City Council) and execute, acknowledge and/or deliver any instruments and consents necessary for Tenant to qualify for the GPLET treatment as contemplated under the terms of this Lease, provided that such acts do not require the payment of any monies by Landlord or impose any economic cost, expense or penalty of any nature upon Landlord. If after the Effective Date, any of the GPLET statutes in force as of the Effective Date are amended so as to negate or reduce the tax abatement and excise tax rate available to Tenant on the Effective Date, Landlord and Tenant agree to cooperate and work together collaboratively and in good faith, at no cost to Landlord, to analyze any acceptable amendments to this Lease or other actions as may be available to provide essentially the same benefits to Tenant as if the GPLET statutes had not been amended.

## **6. INSURANCE.**

**6.1 Tenant Obligation to Insure.** Tenant shall procure and maintain during the Term of this Lease, at Tenant's sole cost and expense, insurance against claims for injuries to persons or damages to property in accordance with the insurance requirements set forth in Exhibit "C" attached hereto. Landlord shall be an additional insured on all such policies.

**6.2 Failure to Maintain Insurance.** If Tenant fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election and subject to Section 8, to procure and maintain such insurance.

**6.3 Waiver of Subrogation.** To the extent that waivers of subrogation are obtained from insurers, and in any event excluding the amounts of any deductible or self-insured threshold, Landlord and Tenant each hereby waives any and all rights of recovery against the other Party, and against the officers, directors, members, managers, employees, agents and representatives of the other Party, for loss of or damage to such waiving Party's property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage, to the extent of the insurance proceeds actually paid. Tenant shall obtain, and Landlord shall request, a waiver of subrogation endorsement from their respective insurers concerning the foregoing waiver of subrogation.

**7. SURRENDER.** Upon the expiration of the Term or on the sooner termination thereof, Tenant shall peaceably and quietly leave, surrender, and yield up to the Landlord all of the Premises free of occupants, and shall repair all damage to the Premises caused by or resulting from the removal of any Removable Property by Tenant (which Tenant shall have the right to remove), normal wear and tear excepted. Subject to the expiration of any notice required to be given to Mortgagees, any property of Tenant or any subtenant which shall remain in the Premises after the expiration of the Term or sooner termination thereof shall be deemed to have been abandoned, and may either be retained by Landlord as its property or disposed of in such manner as Landlord may see fit. If such property or any part thereof shall be sold, Landlord shall receive and retain the proceeds of such sale, except as otherwise provided by Applicable Laws. The provisions of this Section 7 shall survive the expiration or any termination of this Lease. Notwithstanding the foregoing, this Section 7 shall not apply in the event that Tenant has exercised the Purchase Option described in Section 28 of this Lease.

**8. LANDLORD'S PERFORMANCE FOR TENANT.** If Tenant shall fail to make any payment or perform any act required hereunder to be made or performed by Tenant, and provided Landlord has given Tenant thirty (30) days written notice of its intent to do so and Tenant has failed during said period, subject to Enforced Delay, to make such payment or perform the act required to be performed by Tenant, then Landlord may, but shall be under no obligation to, make such payment or perform such act with the same effect as if made or performed by Tenant. Notwithstanding the immediately preceding sentence, Landlord may proceed immediately in the event of an emergency without any notice to Tenant other than bona fide attempts to contact by telephone as soon as reasonably possible under the circumstances either of Tenant's two (2) representatives (whom Tenant may designate from time to time) whose names and telephone numbers Tenant has furnished in writing to Landlord prior to such emergency. Entry by Landlord upon the Premises for such purpose shall not waive or release Tenant from any obligation or an Event of Default hereunder. Tenant shall reimburse Landlord for all reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with Landlord's payment or performance under this Section, and no such payment or performance by Landlord pursuant hereto, shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due or payable, nor limit any right of Landlord or relieve Tenant from any Event of Default hereunder.

**9. USES AND MAINTENANCE.**

**9.1 Absence of Warranties.** Tenant previously held fee simple title to the Resort No. 2 Property and has had the opportunity to fully familiarize itself with the matters described in this Section 9.1 relating to the Resort No. 2 Property. Accordingly, (i) Tenant accepts the Premises (including all subsurface conditions and uses and/or nonuses thereof) in the condition or state in which they now are 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; (ii) Landlord, in its capacity as owner of the Premises and as landlord under this Lease, 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 paving, or other forms of access to the Premises, other than what may already exist on the Effective Date, throughout the Term; and (iii) Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises and all risk of loss from any cause whatsoever other than that which Landlord would have had in its capacity solely as either a municipality or a utility services provider.

**9.2 Permitted Uses.** On the Opening Date, the Premises shall be used for the maintenance and operation of Resort No. 2 as described in the PADA. Thereafter, the Premises may be used for any purpose permitted by Applicable Laws, subject to Tenant's compliance with Applicable Laws.

**9.3 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 in good condition and repair throughout the Term of this Lease.

**9.4 Waste.** Tenant shall not commit or suffer to be committed any material waste of the Premises.

**10. COMPLIANCE.** Tenant shall assume and perform any and all obligations under any covenants, easements and agreements affecting the Title to or use of the Premises and shall diligently comply, at its own expense during the Term, with all Applicable Laws concerning the Premises or any part thereof, and the requirements of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, whether or not the Applicable Laws or requirements 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; provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to, Landlord), contest the validity of any such Applicable Laws or requirements and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, if such postponement would subject Landlord to the risk of any fine, penalty, prosecution for a crime or other exposure to risk of material loss, damage, or liability.

## **11. CONSTRUCTION, OWNERSHIP AND MANAGEMENT OF RESORT NO. 2 IMPROVEMENTS**



**11.1 Resort No. 2 Improvements.** Tenant shall have the requisite right, power and authority to develop, construct, operate and manage the Resort No. 2 Improvements, together with all appropriate furniture, fixtures, furnishings and improvements, including all landscape and hardscape improvements and other facilities, in accordance with the PADA and the Site Plan approved by the City (the "Site Plan"), including, at Tenant's election, the development and construction of additional Resort No. 2 Improvements subject to Section 11.3 of this Lease and all other Applicable Laws.

**11.2 PADA Construction Obligations.** All of Tenant's construction obligations with respect to the Premises, including the timing of commencement and completion of construction, shall be governed by the PADA.

**11.3 Government Approvals.** Tenant will obtain any required approvals of the Site Plan and plans and specifications for the Resort No. 2 Improvements by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter and provide conformed copies of executed approvals (if any) to Landlord.

**11.4 Certificate of Occupancy.** Tenant shall obtain any certificate(s) of occupancy or equivalent ("Certificate of Occupancy") with respect to the Resort No. 2 Improvements and any other improvements constructed on the Premises which may at any time be required by any governmental agency having jurisdiction thereof.

**11.5 Ownership.** Title to the Premises, including the Resort No. 2 Improvements during and after construction thereof by Tenant, shall be and remain vested in Landlord, subject, however, to Tenant's Purchase Option, leasehold interest and other rights under this Lease. Notwithstanding anything herein to the contrary, from and after the Effective Date, Landlord shall not permit the Premises (including, without limitation, Landlord's fee simple interest in the Premises) to be further encumbered in any manner whatsoever, nor permit any impairment of title to the Premises, except in accordance with Section 12.4, without the prior written consent of Tenant, which consent may be withheld in Tenant's sole and absolute discretion.

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

**12.1 Discharge.** Subject to Tenant's rights to contest or dispute same, if any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof as a result of work performed by, on behalf of, or for the benefit of, Tenant, Tenant, at its sole cost and expense, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise on such terms, conditions and schedule as Tenant shall determine to be appropriate.

**12.2 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.

**12.3 No Agency.** The parties acknowledge that Tenant is not the agent of Landlord for the construction, alteration, operation, management, or repair of the Resort No. 2 Improvements or any other improvement Tenant may construct upon the Premises, the same to be accomplished at the sole expense of Tenant; nor shall the original conveyance of the Premises by Tenant to Landlord and the leasing back of the Premises to Tenant for the purpose of receiving GPLET benefits, if any, establish, or be deemed to establish, any relationship between the Parties as principal and/or agent with respect to the PADA or this Lease.

**12.4 Ability to Encumber/Landlord Cooperation.** Notwithstanding anything herein to the contrary, other than matters which Tenant is required to discharge pursuant to Section 12.1, Tenant shall be permitted, without Landlord's consent, to enter into any easements, covenants, license agreements or other agreements encumbering Landlord's fee simple title to the Premises, or otherwise subject Landlord's fee simple title to the Premises to any lien or encumbrance (but not liens or encumbrances for financing), that Tenant reasonably deems necessary or desirable for the use, occupancy, ownership, development or operation of the Resort No. 2 Improvements. Further, upon request of Tenant, and at no cost, expense or liability to Landlord, Landlord agrees to join in and execute any consents requested by Tenant in connection with such matters solely in its capacity as owner of the Premises (but not in its capacity as a municipality); and the City Manager is hereby authorized to execute and deliver such consents on behalf of Landlord.

**13. INSPECTION.** 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 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 seventy-two (72) hours written notice prior to any inspection of any building interior. This notice provision shall not be construed to prohibit or delay any entry by Landlord in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to 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 or other Applicable Law.

#### **14. INDEMNIFICATION.**

**14.1 Indemnification of Landlord.** Tenant shall pay, defend, indemnify and save Landlord (including Landlord's employees, boards, commissions, and council members, elected and appointed officials, and independent contractors performing customary city functions in lieu of city staff) harmless for, 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, consultants' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of Landlord's ownership of the Premises, Landlord's entry into this Lease, or by reason of any of the following occurring during the Term unless caused by the gross negligence or willful conduct of Landlord; and provided, further, that this indemnification shall not apply to any claims asserted against Landlord solely in its capacity either as a municipality or as a utility services provider, and not as the owner of the Premises or Landlord under the Lease:

- (a) construction of the Resort No. 2 Improvements, any additional improvements, or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents;
- (b) 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;
- (c) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;
- (d) 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;
- (e) any failure on the part of Tenant to pay any amounts due hereunder 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 by Tenant as provided in this Lease;
- (f) 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;
- (g) 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;
- (h) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements to which Tenant is a party affecting the Premises or improvements, including the Resort No. 2 Improvements, or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements; and
- (i) any tax payable by Tenant under this Lease or relating to the Premises, including any tax attributable to the execution, delivery or recording of this Lease, and any federal or state income tax, with respect to events occurring during the Term.

The provisions hereof shall survive the expiration or earlier termination of this Lease.

**14.2 Tenant's Property.** 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 pay, indemnify, defend and hold Landlord harmless for, from and against any loss or damage thereto pursuant to Section 14.1.

**14.3 Absence of Insurance Coverage.** 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.

**14.4 Defense of Claims.** 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 14, 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 attorneys designated by Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by attorneys selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord shall at all times cooperate with Tenant in good faith in the defense of any such claims, and Landlord may engage its own attorneys to defend it or to assist in its defense at Landlord's sole expense.

## **15. DAMAGE OR DESTRUCTION.**

**15.1 Tenant Repair and Restoration.** If, at any time during the Term of this Lease, the Premises shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its election and sole cost and expense, whether or not the insurance proceeds shall be sufficient for such purpose, and subject to all Applicable Laws, shall either (i) promptly repair, alter, restore, replace or rebuild the Resort No. 2 Improvements; (ii) commence design and construction of other improvements on all or a portion of the Resort No. 2 Property; (iii) elect to refrain from repairing, altering, restoring, replacing or rebuilding the Resort No. 2 Improvements, or constructing other improvements on the Resort No. 2 Property; or (iv) terminate this Lease by giving Landlord written notice of Tenant's election to so terminate. In any event, Tenant shall proceed with reasonable diligence to raze and remove all damaged improvements which are part of the Premises. If Tenant elects to proceed in accordance with item (ii), item (iii) or item (iv) above, then Tenant shall notify Landlord of its election within one hundred eighty (180) days following after the date of such damage or destruction.

**15.2 Payment of Insurance Proceeds.** All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Section 6, shall be paid to Tenant.

**15.3 Lease Obligations Continue.** If Tenant elects to repair, alter, restore, replace or rebuild the Premises pursuant to Section 15.1 above, in no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of its obligations hereunder because part or all of the Premises shall be untenable owing to the partial or total destruction thereof, and no such damage or destruction shall affect in any way the obligation of Tenant to pay the Net Rent, and other charges herein reserved or required to be paid, nor release Tenant of or from obligations imposed upon Tenant hereunder, except for Tenant's obligation under

Section 9.3, to the extent such obligation is not reasonably capable of being performed during the process of repairing and rebuilding the Premises pursuant to Section 15.1.

## 16. CONDEMNATION.

**16.1 Entire or Substantial Taking.** If the entire Premises are taken by any entity with the power of eminent domain (a "Condemning Authority"), or if the entire Premises are conveyed to a Condemning Authority by a negotiated sale in lieu of or in anticipation of condemnation, or if part of the Premises is so taken or conveyed such that in Tenant's sole opinion the use of the remaining Premises is materially interfered with, or such that the Resort No. 2 Improvements cannot be timely and reasonably rebuilt so that upon completion Tenant may again use the Premises without substantial interference, Tenant may terminate this Lease by giving Landlord written notice at any time after the occurrence of any of the foregoing and such termination shall be effective as of the date of the transfer to the Condemning Authority. If this Lease is terminated pursuant to this Section 16.1, the Net Rent and Additional Payments shall be prorated to the effective date of termination, and Landlord shall refund to Tenant any Net Rent and Additional Payments prepaid beyond the effective date of termination.

**16.2 Partial Taking.** If part of the Premises are taken or conveyed without substantially interfering with the use of the Premises, as determined in Tenant's sole opinion, this Lease shall not terminate and the Net Rent and Additional Payments shall not abate.

**16.3 Awards.** All awards and payments made for any taking or conveyance of all or any part of the Premises as described in this Section 16, including but not limited to severance damages, shall be paid to Tenant in addition to any relocation benefits to which Tenant may be entitled under Applicable Laws.

## 17. ASSIGNMENT, SUBLETTING, MORTGAGE.

**17.1 Assignment and Subletting.** Subject to the provisions of Section 17.2, Tenant shall have the right to assign Tenant's rights under this Lease in its entirety or to sublet all or a portion of the Premises without Landlord's consent. Tenant or its Mortgagee shall at all times be the holder of the Purchase Option.

**17.2 Assignment - Assumption Instrument.** At any time that no Event of Default exists hereunder, Tenant's rights and obligations under this Lease may be assigned or transferred only to a single person or entity that has acquired the entirety of such rights and obligations (i) as a successor in interest to Tenant or any Mortgagee or (ii) pursuant to foreclosure of any Mortgage on the Premises or deed in lieu thereof; provided that, in any case, the successor has expressly and in writing for the benefit of Landlord either (A) assumed all of the obligations of the assignor under this Agreement, including but not limited to all obligations of Tenant arising prior to the date of such assignment or transfer, and all of the right, title and interest in the Premises or (B) assumed all of the obligations of the assignor under this Lease arising from and after the date of such assignment or transfer and all of the right, title and interest in the Premises; provided that in the case of an assumption pursuant to item (B), a party with financial capabilities substantially equivalent to or better than the assignor on the date of such assignment (or otherwise reasonably acceptable to the City), shall guaranty to Landlord the

obligations of the assignor under this Agreement arising prior to the date of such assignment or transfer. The provisions hereof shall be operative for and apply to each subsequent assignment.

**17.3 Non-Disturbance of Subtenants.** If, upon termination or expiration of this Lease, Landlord for any reason remains the fee title owner of the Premises notwithstanding Tenant's Purchase Option, Landlord covenants and agrees that Landlord shall recognize the subtenant as the direct tenant of Landlord if (i) no Event of Default exists under the subtenant's sublease; and (ii) the subtenant delivers to Landlord an instrument acceptable to Landlord in its reasonable discretion confirming the agreement of such subtenant to attorn to Landlord and to recognize Landlord as the subtenant's landlord under its sublease.

**17.4 Rights of Mortgagees.** Tenant or its Affiliates may obtain financing or refinancing, as Tenant or any of its Affiliates deems appropriate, secured by Tenant's leasehold interest and any other rights of Tenant under this Lease, including the Resort No. 2 Improvements to be constructed as part of the Premises, in whole or in part, from time to time, by one or more persons (each, a "Mortgagee", and collectively the "Mortgagees"). In the event of an Event of Default by Tenant, Landlord shall provide notice of such Event of Default, at the same time notice is provided to Tenant pursuant to Section 18, to not more than five (5) Mortgagees previously designated by Tenant to receive such notice (each, a "Designated Mortgagee") at the addresses previously provided by written notice from Tenant to Landlord in accordance with Section 21. Tenant may provide notices to other Mortgagees. If a Mortgagee is permitted, pursuant to this Article 17 or under the terms of its non-disturbance agreement with Landlord ("**Non-Disturbance and Recognition Agreement**") to cure the Event of Default and/or to assume Tenant's position with respect to this Lease, Landlord agrees to recognize such rights of the Mortgagee and to otherwise permit the Mortgagee to assume all of the rights and obligations of Tenant under this Lease. Upon request by a Mortgagee, Landlord will enter into a separate non-disturbance agreement with such Mortgagee, consistent with the provisions of this Section 17.4 (provided Landlord shall in no event be required to provide notice of an Event of Default to any Mortgagee other than a Designated Mortgagee). The Non-Disturbance and Recognition Agreement between Landlord and any Mortgagee shall be in the form attached hereto as Exhibit "D", or such other form as reasonably required by such Mortgagee which is generally consistent with the terms and provisions of Exhibit "D".

**17.5 Landlord's Lien Waiver.** 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 Removable Property located on the Premises.

**17.6 Mortgages—Assignment and Assumption of Lease.** The making of any Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Mortgagee or holder of a Mortgage, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Mortgagee or holder of a Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

**17.7 Notice of Mortgagees.** So long as any Mortgage shall remain a lien on Tenant's leasehold estate hereunder, Landlord agrees, simultaneously with the giving of any notice required by Section 18.1 or Section 18.2 of this Lease to Tenant (i) of an Event of Default, or (ii) of a termination hereof, to give duplicate copies thereof or of any process in any action or proceeding brought to terminate or to otherwise in any way affect this Lease, to each Designated Mortgagee, and no such notice to Tenant or process shall be effective unless a copy of such notice is given to each Designated Mortgagee in the manner herein provided. Concurrently with Tenant, each Designated Mortgagee will have the same period after receipt of the aforesaid notice by Tenant to remedy the Event of Default or cause the same to be remedied plus twenty (20) days thereafter, and Landlord agrees to accept such performance on the part of such Designated Mortgagee or the holder of any Mortgage as though the same had been done or performed by Tenant.

**17.8 Mortgagee Cures.** The termination of this Lease by reason of any Event of Default is subject to the terms and conditions of the Non-Disturbance and Recognition Agreement.

**17.9 Mortgagee's Lease Modifications.** At the request of any Mortgagee, Landlord and Tenant shall execute and deliver such amendments to this Lease as may be reasonably requested by such Mortgagee if such amendments do not materially and adversely affect any rights or obligations of Landlord and Tenant under this Lease.

**17.10 New Lease.** In the event of the termination of this Lease prior to its stated expiration date, Landlord agrees that it will give each Designated Mortgagee notice of such termination and Landlord will enter into a new lease of the Premises with the Designated Mortgagee designated by Tenant as the "First Permitted Mortgagee" or, at the request of such First Permitted Mortgagee, with its assignee, designee, or nominee (provided such assignee, designee or nominee may not be Tenant or any Affiliate of Tenant) for the remainder of the Term effective as of the date of such termination, upon the same covenants, agreements, terms, provisions, and limitations herein contained, provided (i) such First Permitted Mortgagee makes written request upon Landlord for such new lease within thirty (30) days after the Landlord's giving notice of termination and such written request is accompanied by payment to Landlord of all amounts then due to Landlord and such First Permitted Mortgagee's undertaking the cure of any Event of Default remaining uncured as of the date of termination of the Lease, as applicable, provided, in either case, Landlord has given the First Permitted Mortgagee notice of such amounts and/or Event of Default, (ii) such First Permitted Mortgagee pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays or causes to be paid any and all expenses, including reasonable attorney's fees, court costs, and costs and disbursements incurred by Landlord in connection with the execution and delivery of such new lease, less the net income (if any) from the Premises collected by Landlord subsequent to the date of the termination of this Lease and prior to the execution and delivery of such new lease. If Landlord receives more than one written request in accordance with the provisions of this Section, Landlord shall only be required to deliver the new lease to the First Permitted Mortgagee whose Mortgage is prior in lien to any and all other Mortgages whose holders have made such request, and the written request, and its rights hereunder, of any holder of a Mortgage which is subordinate in lien shall be null and void and of

no force or effect. Landlord may rely upon the certificate of any title insurance company authorized to do business in Arizona in determining which Mortgage is prior in lien to all others. The provisions of this Section shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this provision were a separate and independent contract among Landlord, Tenant, and First Permitted Mortgagee. Landlord shall deliver possession of the Premises, subject to any outstanding third party claims, and shall assign to the new Lease Tenant all subleases remaining in the Premises which have not been terminated by Landlord or otherwise.

**17.11 Priority of New Lease.** To the extent permitted by Applicable Laws, any new lease made pursuant to the preceding Section shall be prior to any mortgage or other lien, charge, or encumbrance on the fee of the Premises or on this Lease, and the priority of such new lease shall date back to the date of execution of this Lease.

**17.12 Mortgagee's Lease Modifications.** At the request of any Mortgagee, Landlord and Tenant shall execute and deliver such amendments to this Lease as may be reasonably requested by such Mortgagee so long as such amendments do not materially and adversely affect any rights or obligations of Landlord and Tenant under this Lease.

**17.13 Failure to Comply.** Any transfer, conveyance or assignment, directly or indirectly, of any interest of Tenant or in the Purchase Option that is not in compliance with the provisions of this Section 17 shall be void and shall vest no rights in the purported recipient, transferee or assignee.

## **18. EVENT OF 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 of Additional Payments that are required to be paid directly to Landlord (subject to Tenant's right to protest Additional Payments in Section 5.3) within thirty (30) days after written notice thereof to Tenant; or
- (b) **Other Defaults.** If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions in this Lease other than those referred to in the foregoing Section 18.1(a), and such default shall continue for a period of sixty (60) days after written notice of such default from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such sixty (60) day period to substantially cure such default and is unable by reason of the nature of the work involved, or Enforced Delay, to cure the same within the required sixty (60) days, its time to do so shall be extended by the time reasonably necessary to cure the same as reasonably determined by Landlord); or



- (c) **Insurance, Lapse or Termination.** 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 Event of 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.

**18.2 Notice and Termination; Remedies.** Upon the occurrence of one or more of the events listed in Section 18.1, Landlord at any time thereafter, but not after such Event of Default is cured, may give written notice ("Second Notice") to Tenant specifying such Event(s) of Default and stating that Tenant shall be in Default, and that Landlord shall thereupon be entitled to invoke any and all remedies available to Landlord at law, in equity or as permitted by this Lease, on the date specified in such notice, which shall be at least five (5) days after the giving of such Second Notice, and upon the date specified in such Second Notice, subject to the provisions of Article 17 and the other provisions of this Article 18 and in the case of an Event of Default by Tenant that is not timely cured by the date specified in the Second Notice, Landlord shall have all rights available at law, in equity or as permitted by this Lease; provided, however, that Landlord shall have the right to terminate this Lease only with respect to an Event of Default for (i) a Monetary Default as described in Section 18.1(a); or (ii) a failure of Tenant to comply with Section 29.4 of this Lease, subject to the notice provisions of Section 18.1(b).

**18.3 Tenant Liability Continues.** In the event of expiration or termination, whether or not the Premises or any part thereof shall have been relet, Tenant shall pay to Landlord (or otherwise be responsible for) the Net Rent and Additional Payments required to be paid by Tenant up to the time of such expiration or termination of this Lease.

**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 an Event of Default, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the Party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

**18.5 Remedies Cumulative.** Subject to the limitations set forth in Section 18.2, in the event of a breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and 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 and Additional Payments that are required to be paid directly to Landlord on the date when due, Tenant shall pay Landlord interest on any such overdue payments and associated late charges at the rate of two percent (2%) per month, but in no event an amount greater than permitted by Applicable laws, but this shall in no way limit any claim for damages by Landlord for any breach or Event of Default by Tenant.

**18.6 Late Charge.** In the event that any payment required to be made by Tenant to Landlord under the terms of this Lease is not received within ten (10) days after the date Tenant receives written notice thereof from Landlord, a late charge shall become immediately due and payable to Landlord as an Additional Payment in an amount equal to one and one-half percent (1.5%) of the late payment.

**18.7 Specific Performance.** If an Event of Default is not commenced to be cured within thirty (30) calendar days after service of the notice of Event 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 Event of Default.

**18.8 Breach of Obligations of Indemnity.** Tenant's indemnification obligations under this Lease, including, but not limited to those set forth in Section 29.3, shall survive the expiration or termination of this Lease, and Landlord shall have all remedies available at law or in equity or under this Lease, to enforce and give effect to its indemnification rights, other than the right to terminate this Lease, including but not limited to the right to seek actual and consequential damages as a result of such breach of the Tenant's obligations.

**18.9 Termination Rights Under PADA.** In addition to the rights and remedies of Landlord to terminate this Lease set forth above, Landlord is able to terminate the Lease pursuant to Section 2.7 of the PADA. Such termination right granted and set forth in the PADA is independent of this Lease, and no limitation or restriction imposed upon Landlord in this Lease shall be deemed in derogation of Landlord's rights to terminate the Lease as set forth in the PADA.

## **19. DEFAULT BY LANDLORD.**

**19.1 Limitations of Landlord's Liability.** The term "Landlord," as used in this Lease, so far as Landlord's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises or those having the right of immediate possession in a pending condemnation action at the time in question. Landlord's rights and obligations hereunder shall be non-transferable and non-assignable during the Term, and any purported transfer or assignment in violation of this provision shall be void and vest no rights in the purported transferee or assignee. Landlord shall not convey or transfer all or any portion of the fee simple interest in the Premises except pursuant to the Purchase Option.

**19.2 Remedies.** In the event of any default by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be entitled to enjoin such default and shall have the right to invoke any "special action" or specific performance remedy allowed at law or in equity or by statute or otherwise for such default; provided, however, that Tenant shall have no right to sue Landlord for damages of any kind for such default.

**20. SEVERABILITY.** In the 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 Laws, including any constitutional provision, law or regulation, or the Mesa City

Code or Mesa City Charter), such provision shall be deemed severed from this Lease and this Lease shall otherwise remain in full force and effect; provided that this Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Lease (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; but provided further, that in no event, shall such reformation require payment of, or a commitment to pay, any monies from the General Fund of the City. 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.

**21. NOTICES.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either Party to the other hereunder, except to Tenant in an emergency pursuant to Section 8, shall be in writing signed by or on behalf of the Party giving the notice and addressed to the other Party at its address as set forth below:

To Landlord: City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Manager  
Fax: (480) 905-1419

Copy to: City of Mesa  
20 East Main Street  
Mesa, Arizona 85211  
Attention: City Attorney  
Fax: (480) 905-1419

Copy to: Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012  
Attention: Gary L. Birnbaum, Esq.  
Fax: (602) 285-5100

To Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 (2) 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 (1) business day after deposit with any commercial air courier or express service. Payments required under the Lease may be made in the same manner provided for the giving of notice under this Section 21.

**22. QUIET ENJOYMENT.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent and Additional Payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the Term, without hindrance or molestation by Landlord (or anyone acting on behalf of Landlord).

**23. ESTOPPEL CERTIFICATES.** Landlord or Tenant may request the other Party to deliver a certificate evidencing whether or not:

- (a) The Lease is in full force and effect along with the amount and current status of any 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 Events of Default thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such Events of Default.

Additionally, nothing in this Section 23 shall limit any Party from making any other reasonable request for information relating to the Lease or compliance of a Party with any other term or provision of the Lease. The Party receiving any request made pursuant to this Section 23 shall cooperate with the requesting Party and shall deliver the certificate to the requesting party within twenty (20) days of such request. Any estoppel certificate delivered by a Party may be relied upon by the other Party and in the case of Tenant, by Tenant's existing and prospective assignees and Mortgagees.

**24. CONSENTS.**

**24.1 Parties and Notice.** Whenever the consent or approval of a Party to this Lease is required or reasonably requested under this Lease, if such Party fails to notify the other Party in writing within thirty (30) days (except where a longer period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

**24.2 No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided (e.g., where a Party is entitled to act on its sole discretion). 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.

**25. LIMITATION OF LANDLORD'S LIABILITY.** Except with respect to (i) the gross negligence or intentional misconduct of Landlord, or (ii) claims against Landlord in its capacity solely as either a municipality or a utility services provider, 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 or sidewalks adjacent thereto; and except as set forth above. Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and that Tenant will pay, defend, indemnify and hold harmless Landlord for, from and against any liability or expense arising from or relating to any such occurrence or event.

**26. PADA.** This Lease is entered into in accordance with and subject to the provisions of the PADA which, as they relate to the development of the Resort No. 2 Property and the construction of the Resort No. 2 Improvements, are incorporated herein by this reference and made a part hereof as though fully set forth herein; provided, however, that any conflict between the PADA and this Lease that relates to the development of the Resort No. 2 Property or the construction of the Resort No. 2 Improvements shall be resolved in favor of the PADA, and any conflict between the PADA and this Lease that relates to the use and occupancy of the Premises or any rights and obligations of Tenant other than those which relate to the development of the Resort No. 2 Property and the construction of the Resort No. 2 Improvements shall be resolved in favor of this Lease.

**27. ENFORCED DELAY IN PERFORMANCE FOR CAUSES BEYOND CONTROL OF PARTY.** Neither the Landlord nor Tenant, as the case may be, shall be considered to have caused a Event of Default with respect to its obligations under this Lease in the event of a delay (an "Enforced Delay") due to causes 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 Lease or relating to transactions contemplated hereby, fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain by any governmental body on behalf of any public, quasi-public, or private entity, or declaration of

moratorium or similar hiatus directly affecting the Premises by any governmental entity or (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, unavailability for any reason of particular tenants or purchasers of all or any portion of the Premises, from the unavailability of financing or financing on terms acceptable to Tenant, from labor shortages, from any time required by the Landlord to review, comment upon, or process any plan, submittal or approval, nor from the unavailability for any reason of particular materials or other supplies, contractors, subcontractors, vendors, investors or lenders desired by Tenant. It is understood and agreed that Tenant will bear all risks of delay which are not 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 of the Enforced Delay. The Party seeking the benefit of the provisions of this Section 27 shall, within thirty (30) days after such Party knows or reasonably should know of any such Enforced Delay, first notify the other Party or Parties of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

## **28. OPTION TO PURCHASE THE PREMISES.**

**28.1 Option to Purchase.** Landlord hereby grants to Tenant the exclusive and irrevocable option to purchase all of Landlord's right, title and interest ("Title") in and to the Premises, including the Resort No. 2 Improvements, according to the terms and conditions hereinafter set forth (the "Purchase Option"). The Purchase Option is not severable and must be transferred by Tenant in connection with any assignment of the entire Premises pursuant to Section 17.1.

**28.2 Exercise of Option.** The Purchase Option shall become effective and Tenant shall have the right to exercise the Purchase Option at any time during the Term, or upon expiration (voluntary or involuntary) of the Term, by giving written notice of exercise to Landlord; provided that (i) Tenant's right to exercise the Purchase Option shall be conditioned upon Tenant curing any monetary Event of Default under Section 18.1(a) of this Lease; and (ii) if not previously exercised by Tenant, the Purchase Option shall be deemed exercised by Tenant for all of the Premises upon the expiration or sooner termination of this Lease.

**28.3 Purchase Price.** The purchase price for Title to the Premises shall be Five Thousand Dollars (\$5,000.00), plus reasonable attorneys' fees and other actual out-of-pocket costs or expenses incurred by Landlord in connection with the repurchase transaction. The purchase price referred to in the preceding sentence shall be payable to Landlord concurrently with the conveyance of Title to the Premises by Landlord to Tenant.

**28.4 Conveyance of Title and Delivery of Possession.** Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for Title to the Premises to be conveyed to Tenant no later than the thirtieth (30<sup>th</sup>) day after the sooner to occur of (i) the date upon which Tenant exercises the Purchase Option, or (ii) the date of the expiration or sooner

termination of this Lease on which Tenant shall be deemed to have exercised the Purchase Option, in which latter event the Term of this Lease automatically shall be extended for up to thirty (30) days to the date upon which Title to the Premises shall be conveyed to Tenant. Title shall be conveyed by Landlord to Tenant by special warranty deed in the form attached as Exhibit "E." All expenses in connection with conveyance of Title to Tenant including title insurance 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. This Lease shall terminate concurrently with the conveyance of Title to Tenant.

## 29. COMPLIANCE WITH ENVIRONMENTAL LAWS.

**29.1 Definitions.** The following terms as used in this Lease shall have the meanings hereinafter set forth:

(a) **"Environmental Laws"**: Those laws promulgated for the protection of human health or the environment, including the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. Section 651 *et seq.*; Maricopa County Air Pollution Control Regulations; Title 41, Chapter 4.1, Article 4, Archaeological Discoveries, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(b) **"Regulated Substances"**:

(1) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Section 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. Section 49-201 *et seq.*; including the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S.

Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 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 Term.

(c) **"Release"**: Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

**29.2 Compliance.** Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises.

Tenant shall not cause or permit any Regulated Substances 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, contractors, invitees or a third party in a manner that would constitute or result in a material violation of any Environmental Laws or that would give rise to liability under Environmental Laws.

Tenant may provide for the treatment of certain discharges regulated under the pretreatment ordinances pursuant to the Federal Clean Water Act, 33 U.S.C. Section 1251 *et seq.*

**29.3 Indemnification.** Tenant shall pay, indemnify, defend and hold harmless, on demand, Landlord 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 claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Laws, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises (unless such claim or action is the result solely of the gross negligence or intentional acts of Landlord) or Landlord's status of holder of title to the Premises. Regardless of the date of termination or expiration of this Lease, Tenant's obligations and liabilities under this Section 29.3 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use or ownership of the Premises during the Term. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, or under the Premises.

**29.4 Remediation.** Without limiting the foregoing, if the presence of any Regulated Substances on or under the Premises results in any contamination of the Premises during the Term, Tenant shall promptly take all actions as are necessary to mitigate any immediate threat to human health or the environment at its sole cost and expense. Tenant shall



then undertake any further action necessary to render the Premises or other property to a condition in compliance with applicable action levels of applicable Environmental Laws, except to the extent solely resulting from any act or omission of Landlord; or (ii) resulting from actions undertaken in material compliance with Environmental Laws. 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.

**29.5 Reports, Information, Etc.** Tenant shall, at Tenant's own cost and expense, conduct all tests, reports, studies and provide all information (with copies concurrently supplied to Landlord) 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 spills or discharges of Regulated Substances on, or under the Premises, during the Term. At no cost or expense to Landlord, Tenant shall promptly provide all information reasonably requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

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

**29.6 Notification.** Tenant shall immediately notify Landlord of any of the following: (i) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises, and (ii) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Section 29.

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

**29.8 Storage Requirements.** 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.

**29.9 Noncompliance.** Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy pursuant to Section 8 in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a material 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 Section shall not release Tenant from any obligation it would otherwise have hereunder.

## **30. MISCELLANEOUS.**

**30.1 Landlord's Right of Cancellation.** The Parties acknowledge that this Lease is subject to cancellation by Landlord pursuant to A.R.S. Section 38-511.

**30.2 Legal Actions.** Any legal action instituted pursuant to this Lease shall be brought in the Superior Court of the State of Arizona in and for the County of Maricopa, or in the United States District Court in the District of 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 and not a jury. 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, they will execute a memorandum of this Lease in a form attached hereto as Exhibit "E" satisfactory for recording in the Office of the County Recorder, Maricopa County, Arizona.

**30.4 Entire Agreement.** This Lease, together with its Exhibits and all documents incorporated herein by reference, and the PADA 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 Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Section numbers are to those in this Lease unless otherwise noted.

**30.6 Execution and Delivery.** This Lease shall bind Landlord and Tenant only after both Parties have executed this Lease and delivered it to each other.

**30.7 Singular and Plural, Gender, Include and Including.** If two (2) 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. The words "include" or "including" as used in this Lease shall mean "include without limitation" or "including without limitation", respectively.

**30.8 Multiple Parties.** If at any time Landlord, Tenant, or any Mortgagee (Landlord, Tenant or any such Mortgagee being in this Section referred to as a "**Multiple 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 Multiple 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 (3) 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 Multiple 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 Multiple 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 Depreciation.** For income tax purposes, and notwithstanding that title to the Resort No. 2 Improvements is vested in Landlord, the Parties intend and hereby covenant that Tenant and not Landlord shall be entitled to the depreciation of the Resort No. 2 Improvements under all applicable federal, state and local income tax statutes, acts, codes and regulations, including the Internal Revenue Code of 1986, as amended.

**30.10 Amendment.**

(a) No change, addition or deletion is to be made to this Lease except by a written amendment approved by the City Council of the City and executed by the Parties.

(b) The Parties shall have the authority, without further action of the City Council of the City, (i) to amend this Lease for purposes of substituting a revised **Exhibit A** delineating changes in the boundaries of the Resort No. 2 Property, and (ii) to amend this Lease for purposes of substituting a revised **Exhibit B** describing minor adjustments in the boundary of the Resort No. 2 Property and/or to record an affidavit of correction modifying the boundary of the Resort No. 2 Property.

(c) Within ten (10) days after any approved amendment to this Lease, pursuant to this Section 30.10, a memorandum of lease with respect to such approved amendment shall be executed by the parties and recorded in the office of the Maricopa County, Arizona Recorder.

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

<u>Exhibit "A"</u>	Legal Description of Resort No. 2 Property
<u>Exhibit "B"</u>	Depiction of Resort No. 2 Property
<u>Exhibit "C"</u>	Insurance Requirements
<u>Exhibit "D"</u>	Non-Disturbance and Recognition Agreement
<u>Exhibit "E"</u>	Special Warranty Deed
<u>Exhibit "F"</u>	Memorandum of Lease

[Signatures of the Parties are on next page]

**"Landlord"**

CITY OF MESA, a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**"Tenant"**

\_\_\_\_\_, a(n)

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description of Resort No. 2 Property**

**[TO BE ATTACHED UPON EXECUTION OF THE LEASE]**

**EXHIBIT "B"**

**Depiction of Resort of No. 2 Property**

**[TO BE ATTACHED UPON EXECUTION OF THE LEASE]**

## EXHIBIT "C"

### INSURANCE REQUIREMENTS

Tenant shall procure and maintain insurance during the applicable "Coverage Period," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction on the Premises by Tenant, its agents representative, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the "Lease"), and in no way limit the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below:

<u>Type</u>	<u>Amount</u>	<u>Coverage Period</u>
Property	\$200,000,000 (If this amount exceeds the replacement values of such Property, Landlord in its discretion, and through its City Manager's written approval, may approve Tenant carrying lower amounts of coverage which, in no event, shall be less than the full replacement value.)	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease
Business Interruption Coverage (To be endorsed to the Property and Builder's Risk policies)	Minimum 12 months' rent and ongoing operating expenses.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Lease.
Workers' Compensation ("WC") and Employers' Liability ("EL")	WC: Statutory EL: \$500,000 each accident/each employee.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Lease.
General Liability (which shall include operations, products, completed operations, and contractual indemnity coverage), and	With limits not less than \$40,000,000 each occurrence, Combined Single Limit for bodily injury and property damage and \$40,000,000	Coverage shall be in effect at or prior to and remain in effect for the Term of the Lease.

Liquor Liability coverage	general aggregate, and with coverage that shall be at least as broad as that on ISO Form CG 00 01. (Landlord in its sole discretion, and through its City Manager's written approval, may approve Tenant carrying lower General Liability limits.)	
Commercial Automobile Liability	With limits not less than \$2,000,000 each occurrence, Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable, and with coverage that shall be at least as broad as that on ISO Form CA 00 01.	Coverage shall be in effect at or prior to and remain in effect for the Term of the Lease.
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage to be obtained prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	\$2,000,000	Coverage to be obtained prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	\$5,000,000	Coverage shall be in effect upon or prior to substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease
Boiler and Machinery Coverage	\$25,000,000	Coverage to be obtained prior to any construction activities and maintained in effect for



		the remainder of the Term of the Lease
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**B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, employees, representatives, boards, commissions, attorneys, councilmembers, and elected and appointed officials shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies as required herein and/or by the Lease.
2. On insurance policies where the Landlord is to be covered as an additional insured, the Landlord shall be named as additional insured to the full limits or to the same extent of liability as the insurance purchased by Tenant, even if those limits of liability are in excess of those required by the Lease.
3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.
4. All policies shall include a waiver of subrogation rights against the City, its agents, employees, representatives, boards, commissions, attorneys, councilmembers and elected and appointed officials.
5. All general liability policies shall include contractual liability coverage covering, among other things, Tenant's indemnification obligations under the Lease.

**C. EXCESS OR UMBRELLA POLICY.** In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements provided that Tenant shall use all commercially reasonable efforts to obtain excess or umbrella coverage that is written on a "following form" basis.

**D. NOTICE OF CANCELLATION:** Tenant shall obtain, with all policies required herein, an Accord 25 form or an equivalent form that states that the insurer shall endeavor to provide Landlord thirty (30) days' prior written notice (except when cancellation is for non-payment of premium, then ten (10) days prior notice) before suspending, voiding, or canceling the policy. Such notice shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 East Main Street, Suite 850, P.O. Box 1466, Mesa Arizona 85211-1466.

**E. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A-VII, unless otherwise approved in writing by the City. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

**F. VERIFICATION OF COVERAGE:** Tenant shall furnish the Landlord with original Certificates of Insurance and amendatory endorsements for all policies as required herein. The certificates are to be signed by a person duly authorized by the insurer.

All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period.

All certificates required by the Lease shall be sent directly to the City of Mesa, the City Attorney, City Attorney's Office, City of Mesa, 20 East Main Street, Suite 850, P.O. Box 1466, Mesa Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

**G. WAIVER OF SUBROGATION:** In addition to Tenant's waiver of subrogation requirements as provided in the Lease and in this Exhibit (Section B), Tenant agrees to obtain any endorsement that may be necessary to comply with the waiver of subrogation contained in the Lease. Tenant shall obtain a worker's compensation policy that is endorsed with a waiver of subrogation in favor of Landlord for all work performed by the Tenant, its employees, agents, contractors and subcontractors.

**H. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS:** Any deductibles or self-insured retention in excess of \$250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, employees, representatives, boards, commissions, attorneys, councilmembers, or elected and appointed officials.

**I. SUBCONTRACTORS:** Tenant shall require and the General Contractor shall verify that all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Premises. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

**J. LEASE TERMS:** The requirements in this Exhibit are in addition to any insurance requirements contained in the Lease. If any of the insurance coverages, amounts, terms, or requirements contained in this Exhibit are in conflict with the terms of the Lease, the term or requirement that results in the greatest insurance coverage or benefit to Landlord shall be applicable.

**EXHIBIT "D"**

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NON DISTURBANCE AND RECOGNITION AGREEMENT  
(Development Lease - Resort No. 2 Property & Resort No. 2 Improvements)**

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "NDRA") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) \_\_\_\_\_, a(n) \_\_\_\_\_ ("Tenant"); (b) \_\_\_\_\_ ("Lender"); and (c) CITY OF MESA, ARIZONA, an Arizona municipal corporation ("City").

1. Recitals.

1.1 Tenant is the present developer under: (a) a *Pre-Annexation Development Agreement (Mesa Proving Grounds - Hospitality Facilities and Convention Center)* entered into with the City of Mesa, Arizona, dated \_\_\_\_\_, 20\_\_, and recorded in the Official Records of Maricopa County, Arizona, at \_\_\_\_\_; and (b) the Tenant under a *Development Lease (Resort No. 2 Property & Resort No. 2 Improvements)*, entered into with the City, dated \_\_\_\_\_, 20\_\_, evidenced by a *Memorandum of Lease*, recorded in the Official Records of Maricopa County, Arizona, at \_\_\_\_\_ (the "Lease") (collectively, the "Agreements"), which set forth certain rights and responsibilities of Tenant with respect to that certain real property referred to herein as the "Property," and more particularly described in **Exhibit "A"** attached hereto.

1.2 The Lease relates to lease of the Property and certain improvements by the City to Tenant. Tenant's rights under the Lease are sometimes referred to herein as "Tenant's Position". Tenant's obligations under the Lease are sometimes referred to herein as the "Obligations".

1.3 Lender has agreed to lend money or otherwise make credit available to Tenant, and Tenant will execute (or has executed) certain loan documents (the "Loan Documents") relating thereto, which may include, but are not limited to, a [*Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement*] for the use and benefit of Lender (the "Deed of Trust") to secure the financing provided by Lender to Tenant (the "Loan"). The Deed of Trust will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights and remedies under the Loan Documents, including but not limited to the right to foreclose the Deed of Trust and effectuate a transfer of the Property.